

In The Matter Of:

*FREE SPEECH COALITION, INC. et v
THE HONORABLE ERIC H. HOLDER*

March 14, 2013

*SOUTHERN DISTRICT REPORTERS
500 PEARL STREET
NEW YORK, NY 10007
212 805-0330*

<p>1 Alper</p> <p>2 A. I am in the process of creating a new</p> <p>3 website.</p> <p>4 Q. Do you use some kind of a program so</p> <p>5 that you control and manage the content?</p> <p>6 A. I have not been able to do that. I</p> <p>7 had somebody -- it's complicated. I had</p> <p>8 somebody who designed my site. It is too much</p> <p>9 trouble for me, so I haven't done anything as</p> <p>10 far as changing images for about a year, which</p> <p>11 is why I am now creating a new website where I</p> <p>12 can change images around at will, but I am</p> <p>13 learning how to do that.</p> <p>14 Q. Why do you have a website?</p> <p>15 A. For people to be able to see the kind</p> <p>16 of work I do for reference, for work purposes.</p> <p>17 Q. So you do it for commercial purposes?</p> <p>18 A. Yes.</p> <p>19 Q. Do you know of other websites where</p> <p>20 you have content or pages or something like</p> <p>21 that?</p> <p>22 A. I am a finalist in a Hasselblad</p> <p>23 Masters Competition, so I am on their website.</p> <p>24 I have a stock agency that represents some of my</p> <p>25 work, so I am on their website.</p>	<p>1 Alper</p> <p>2 and then they posted it on the site?</p> <p>3 A. Yes.</p> <p>4 Q. Do you think that the images that you</p> <p>5 see there are representative of your current</p> <p>6 work?</p> <p>7 MS. BAUMGARDNER: Objection.</p> <p>8 A. My work is varied. So it's</p> <p>9 representative of some area and aspect of my</p> <p>10 work.</p> <p>11 Q. How would you characterize your work</p> <p>12 currently?</p> <p>13 MS. BAUMGARDNER: Objection. If you</p> <p>14 can, Barbara.</p> <p>15 A. It is varied.</p> <p>16 Q. Could you give examples of the kind of</p> <p>17 work that you are doing now?</p> <p>18 MS. BAUMGARDNER: Objection.</p> <p>19 A. I do editorial work on assignment, and</p> <p>20 I do personal work.</p> <p>21 Q. What kinds of subject matter appear in</p> <p>22 your work?</p> <p>23 A. People, food, clubs, fashion, flowers,</p> <p>24 gardens, a whole range of stuff really.</p> <p>25 Q. Have you made photographs that depict</p>
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<p>1 Alper 2 where you took such photographs? 3 A. Yes. 4 Q. What was the earliest time period when 5 you were taking photographs of sexually explicit 6 conduct? 7 A. Actually, the earliest would be 1978. 8 Q. What were those photographs? 9 A. Couples. 10 Q. In what sense? 11 A. A couple making love. 12 Q. Where was the setting? 13 A. In their home. 14 Q. Are you talking about more than one 15 photograph or couple or -- 16 A. That was one instance. 17 Q. That was one instance? 18 A. Yes. 19 Q. When was the next time? 20 A. There might have been some others 21 along the way, but then I photographed at clubs 22 starting in 1981. 23 Q. How did you come to photograph at 24 clubs? 25 A. A photographer who was having a party</p>	<p>1 Alper 2 Q. What was it? What time of day was the 3 event? 4 A. It was at night. 5 Q. I'm not very familiar with clubs, so 6 what was it like? Was it very crowded? 7 A. Yes. 8 Q. Noisy? 9 A. I don't remember. 10 Q. Was it dark? 11 A. Yes. 12 Q. Were people drinking? 13 A. Yes. 14 Q. Were you drinking? 15 A. No. 16 Q. How did you decide what photographs to 17 take? 18 A. I photograph what interests me. 19 Q. Were people using drugs at the club? 20 MS. BAUMGARDNER: Objection. 21 A. I have no idea. 22 Q. That you know of? 23 A. I have no idea. 24 Q. Were you using drugs when you were 25 taking photographs at the club?</p>
<p>1 Alper 2 at one of the S & M clubs invited me and said 3 bring my camera. 4 Q. At the time what else were you doing 5 in photography? 6 A. I was working for American Lawyer 7 Magazine. I was freelancing, and I started a 8 series on Rockaway Beach. 9 Q. When you went to these clubs, the 10 first, when you went to the first club and were 11 asked to bring your camera, was that -- did that 12 qualify as an assignment or -- 13 A. It was a personal project. 14 Q. Were you paid for this? 15 A. No. 16 Q. Why did your friend or acquaintance 17 ask you to bring your camera? 18 MS. BAUMGARDNER: Objection. 19 Q. If you know. 20 A. They thought I would be interested and 21 want to take pictures. 22 Q. When you went to this club, what was 23 the setting? 24 A. It was an S & M club called the 25 Hellfire Club.</p>	<p>1 Alper 2 MS. BAUMGARDNER: Objection. 3 A. No. 4 Q. Did you ever think when you were 5 taking these photographs that -- first of all, 6 were all the photographs that you took at this 7 club photographs of sexually explicit conduct? 8 A. Yes. 9 Q. In what sense? 10 MS. BAUMGARDNER: Objection. 11 A. I don't understand. 12 Q. What was involved that makes you 13 believe that the photographs you were taking 14 were of sexually explicit conduct? 15 A. It was an S & M club. 16 Q. So all of the photographs that you 17 took involved S & M conduct? 18 A. Yes. 19 Q. Did you ever wonder about the fact 20 that if you were to photograph a minor engaged 21 in that conduct -- let me rephrase. Did it ever 22 occur to you to wonder whether any of the 23 individuals in the club were minors? 24 A. It is an adult-only club. 25 Q. What does that mean?</p>

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<p>1 Alper</p> <p>2 A. It means people had to be over 21 to</p> <p>3 get in.</p> <p>4 Q. How is that enforced?</p> <p>5 A. There was a sign posted at the</p> <p>6 entrance, and IDs were checked.</p> <p>7 Q. Who was checking IDs?</p> <p>8 MS. BAUMGARDNER: Objection.</p> <p>9 If you can remember.</p> <p>10 A. Whoever took people's money to enter</p> <p>11 the club.</p> <p>12 Q. Have you ever heard of underaged</p> <p>13 individuals getting into clubs that had age</p> <p>14 restrictions?</p> <p>15 A. I have no idea.</p> <p>16 Q. You never looked at the IDs of the</p> <p>17 people whose photographs you were taking?</p> <p>18 A. There would be no reason to.</p> <p>19 Q. So you were operating on an assumption</p> <p>20 that the people you were photographing were 18</p> <p>21 or over or 21 or over?</p> <p>22 MS. BAUMGARDNER: Objection. I don't</p> <p>23 think it was an assumption. But go ahead. You</p> <p>24 can answer Ms. Wyer's question.</p> <p>25 A. I knew that people were older.</p>	<p>1 Alper</p> <p>2 A. If there was a party that I knew of</p> <p>3 and I was invited to photograph at.</p> <p>4 Q. Was the total number of times when you</p> <p>5 went to clubs to take photographs more than a</p> <p>6 hundred?</p> <p>7 MS. BAUMGARDNER: Objection.</p> <p>8 She's testified she doesn't remember.</p> <p>9 A. Right. I don't remember.</p> <p>10 Q. You don't remember if it was more than</p> <p>11 a hundred or less than ten?</p> <p>12 A. I don't think it was more than a</p> <p>13 hundred.</p> <p>14 Q. Do you think it was more than 50?</p> <p>15 A. I don't know.</p> <p>16 Q. More than 90?</p> <p>17 MS. BAUMGARDNER: Objection. She's</p> <p>18 answered the question that she doesn't remember.</p> <p>19 It's less than a hundred.</p> <p>20 THE WITNESS: Right.</p> <p>21 MS. BAUMGARDNER: We have provided</p> <p>22 photos of some of the clubs she photographed.</p> <p>23 Q. When was the last time that you took</p> <p>24 photographs at a club of S & M?</p> <p>25 A. 1995.</p>
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<p>1 Alper 2 exhibition of genitals? 3 A. I am not sure what "lascivious 4 exhibition" means. 5 Q. So you have not attempted to determine 6 whether -- have you ever taken a photograph 7 where you wondered if it qualified as lascivious 8 exhibition of the genitals? 9 MS. BAUMGARDNER: Objection. I think 10 it's fair she's asked you what lascivious 11 exhibition of the genitals means so she can 12 answer your question. If you would provide her 13 the definition, she could answer. 14 Q. Let me rephrase. You say other than 15 the photographs of you and your husband you have 16 never taken photographs of sexually conduct 17 since 1995, correct? 18 A. Correct. 19 Q. Is that correct or not? 20 A. That's correct. 21 MS. BAUMGARDNER: Can I bring Cara 22 back in. 23 THE WITNESS: Yes. 24 MS. BAUMGARDNER: Kathy, is that all 25 right with you? We will ask her to leave if the</p>	<p>1 Alper 2 A. I don't remember the specifics of the 3 law, but I believe that if -- what? If it were 4 shared, if somebody wanted to examine my 5 records, that's how. 6 Q. In your understanding, someone 7 examining your records could lead to your 8 records becoming public? 9 A. Yes. That's one. 10 Isn't there another aspect of the law 11 where the -- I am not good at remembering 12 specific details of the law in general. 13 Q. You are not concerned with yourself 14 checking IDs, correct? 15 A. I didn't say that. 16 Q. You are concerned? Are you concerned 17 about checking IDs? 18 A. I would not photograph anyone 19 underage. That is of no interest to me. So I 20 know that people are old enough and over the age 21 of 21 or 18 -- over the age of 21 before I would 22 be photographing them. 23 Q. So the requirement that you check IDs, 24 is that a concern to you, just the checking of 25 the IDs?</p>
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<p>1 Alper 2 subject matter comes up again. I got the 3 impression that you were moving on to a new area 4 of questioning. 5 MS. WYER: OK. 6 (Ms. Gagliano present) 7 Q. Let's turn to 2257. Could you 8 describe what requirements of 2257 cause you 9 concern. 10 A. This is a couple of things. One is 11 the requirement of showing people's IDs and 12 revealing their identity; two, the recordkeeping 13 involved. Those are a couple of things. 14 Q. When you say showing peoples IDs and 15 revealing their identity is a concern, are you 16 concerned about people revealing their 17 identities to you? 18 A. Not to me. 19 Q. Are you concerned about looking at 20 people's IDs? 21 A. No. 22 Q. So what is concerning about looking -- 23 A. Their information could be made 24 public. 25 Q. How do you think that would happen?</p>	<p>1 Alper 2 MS. BAUMGARDNER: Can you clarify what 3 you mean by concern, Kathy. I don't mean to be 4 playing games here. That might be kind much a 5 loose term. If you could clarify that a bit, it 6 might make it easier for her to respond. 7 A. I know the people I photograph, so I 8 don't need to check ID. 9 Q. So you view checking IDs as 10 unnecessary because you never -- when you say 11 you know the people you photograph, what 12 photographs are you describing? 13 A. The personal ones that I take. 14 Q. I think now we are going back to the 15 subject. 16 MS. BAUMGARDNER: OK. This may elicit 17 more testimony that will be subject to the 18 protective order, so I am going to ask the law 19 student in the room to leave the room, please. 20 (Ms. Gagliano not present) 21 A. I know how old I am, and I know how 22 old my husband is. And I have our IDs. 23 Q. So these are the only photographs that 24 you are describing? 25 A. That I am photographing currently.</p>

<p style="text-align: right;">Page 33</p> <p>1 Alper 2 A. Yes. 3 Q. Is that always the case, that they are 4 for sale? 5 A. If they are at a museum, they are not 6 for sale. 7 Q. But at a gallery they would always be 8 for sale? 9 A. Yes. 10 Q. When you responded to the defendant's 11 request for production and provided 10 examples 12 of your work, do you remember the photographs 13 that you gave us as examples? 14 A. Not off the top of my head. 15 MS. BAUMGARDNER: Do you have the list 16 available. That would be helpful. 17 Q. Would just looking at the list from 18 your discovery responses refresh your memory? 19 A. Of what? 20 Q. Of the photographs that you gave us as 21 examples. 22 A. Yes. 23 Q. The list, if we gave you the list. 24 A. I'm not sure what you are asking to 25 elicit.</p>	<p style="text-align: right;">Page 35</p> <p>1 Alper 2 that might refresh her recollection as to how 3 she made those selections. 4 A. Because they are a representative 5 sample of my work. 6 Q. Would any photograph from the clubs 7 that you took of S & M conduct before 1995 be 8 representative? 9 A. Yes. 10 Q. So were these a random selection? 11 A. Yes. Some of them I had already 12 scanned. 13 Q. How many of these photographs from 14 that set of pre-1995 S & M conduct have been 15 sold or collected? 16 A. The New York Public Library purchased 17 20 of them. The Bibliothèque Nationale in Paris 18 purchased -- I can't remember exactly how many. 19 They purchased 10 or 20. I don't remember 20 exactly. So those are two examples. 21 Q. Any other sales that you can remember? 22 A. Yes. My work has been published in 23 a -- is it a Danish, Norwegian magazine called 24 Cupido. 25 I don't remember if I was paid --</p>
<p style="text-align: right;">Page 34</p> <p>1 Alper 2 Q. There is one copy. I will show it to 3 you to refresh your memory. 4 MS. BAUMGARDNER: That was response to 5 question No. 5 of the defendant's first set of 6 interrogatories propounded to plaintiffs? 7 MS. WYER: Yes. 8 A. So what is your question? 9 Q. Does looking at that list of titles 10 refresh your memory about what photographs you 11 provided to the defendant as examples of your 12 work? 13 A. Yes. 14 Q. How did you select the photographs in 15 that list to provide? 16 A. I don't -- 17 MS. BAUMGARDNER: Would you let her 18 read the statute. That might help her refresh 19 her memory of how she -- 20 MR. BLADUELL: I don't think she's 21 established that she doesn't remember, and she 22 cannot answer the question without the list. 23 MS. BAUMGARDNER: Kathy asked how she 24 selected them. And I think if she reads the 25 question of what she was supposed to produce,</p>	<p style="text-align: right;">Page 36</p> <p>1 Alper 2 yeah, I have work in a book called Sex in New 3 York City, and I think I was probably paid a fee 4 for use of those pictures for the book. 5 Q. Do you recall what year that book was 6 published? 7 A. Since 2000 -- no, I can't remember. 8 Q. Was it after 1995? 9 A. I'm not sure. 10 Q. But the book would have a copyright 11 date that would indicate that? 12 A. Yes. 13 Q. Going back to the 2257 requirements, 14 we've talked about the ID requirement. When I 15 ask you what requirements cause you concern, 16 what I mean is which ones do you feel impact you 17 or which ones are you objecting to. 18 Are you objecting to the requirement 19 of checking IDs? 20 MS. BAUMGARDNER: Objection. 21 A. Of checking ID? No. 22 Q. So I will try to explain what I mean 23 by "of concern" further. What I am asking is 24 which requirements do you feel burden you, which 25 ones are the ones that are the reason that you</p>

<p style="text-align: right;">Page 41</p> <p>1 Alper 2 the grounds that I think it's unfair -- 3 MS. WYER: I understand all of that. 4 MS. BAUMGARDNER: -- that you are 5 asking these questions without allowing her to 6 review the particular regulations in the law. 7 MS. WYER: We've noted that objection. 8 Q. You mentioned here that one of your 9 concerns is that you will not be able to find 10 the IDs of individuals that appear in your work 11 before 1995, and your concern there -- did I 12 understand correctly that your concern is that 13 you cannot publish, in your understanding you 14 cannot publish such images from your pre-1995 15 period together with any image that you might 16 produce after the requirements have gone into 17 effect? 18 A. Yes. 19 Q. But nothing would prevent you in your 20 understanding from publishing your pre-1995 work 21 separately, is that correct? 22 MS. BAUMGARDNER: Objection. 23 If you know. 24 A. I don't think it would affect, but 25 that's not what I want to do.</p>	<p style="text-align: right;">Page 43</p> <p>1 Alper 2 explain this? Fire Island, where there are 3 people openly having sex, there are men openly 4 having sex that I could photograph, but it is in 5 a totally anonymous situation, so I can't do it. 6 Q. Are you saying that you would like to 7 take photographs of these people without their 8 knowledge? 9 A. I can't do that. 10 Q. I don't understand. 11 A. I might be able to approach them 12 afterwards, but nobody is willing to give an ID 13 when people are having anonymous sex. 14 Q. You mentioned Fire Island. What does 15 that mean? 16 A. There are areas in Fire Island -- 17 Q. Where is Fire Island? I am not 18 familiar. 19 A. It is on Long Island. 20 Q. Why is that a location in particular 21 that you mentioned? 22 A. Because it is a location that's known. 23 Q. So going back to the photos of you and 24 your husband, how many photographs exist from 25 that?</p>
<p style="text-align: right;">Page 42</p> <p>1 Alper 2 Q. So could you explain what your plan is 3 for this compilation that you have indicated you 4 are interested in producing. 5 A. I would like to produce a book of work 6 that I have taken prior to 1995 and include work 7 that I've taken and/or will take since 1995 and 8 put it together as representative of a body of 9 work that I've done in my lifetime. 10 Q. Since 1995 so far the only -- 11 MS. BAUMGARDNER: This may also 12 implicate protected information protected by the 13 protective order. So I am going to ask Cara to 14 leave. 15 (Ms. Galiano not present) 16 Q. Since 1995 the only images that you 17 have produced that qualify as depictions of sex 18 reply explicit conduct are the images of you and 19 your husband, correct? 20 A. Yes. There are other situations that 21 I have opportunity to photograph, but I can't 22 because I can't ask for IDs. 23 Q. What do you mean you can't ask for 24 IDs? 25 A. There are situations where -- how do I</p>	<p style="text-align: right;">Page 44</p> <p>1 Alper 2 MS. BAUMGARDNER: Objection. 3 A. I don't know. 4 Q. These are photographs, not video, is 5 that correct? 6 A. Yes. That's correct. 7 Q. You said that you've taken these such 8 photographs on approximately five occasions? 9 A. No. 10 MS. BAUMGARDNER: Objection. 11 A. That is not what I said. 12 Q. OK. Please repeat what you said. I 13 don't remember. 14 A. I said I had photographed over the 15 last five years. 16 Q. And how many occasions? 17 A. I don't remember. 18 Q. So what has happened to these 19 photographs? 20 A. One, I have them; two, they were 21 published in Cupido, in the magazine that is 22 published in Norway. 23 Q. Do you know what year, what issue of 24 the magazine? 25 A. I don't know specific issues, no.</p>

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1 Alper	1 Alper
2 Q. Would that be the most recent of your	2 them that you feel impose a burden on you?
3 sales, to Cupido?	3 A. I think I already mentioned
4 A. Yes.	4 recordkeeping.
5 Q. Did you create records under 2257 for	5 Q. Anything else?
6 these images?	6 A. I would have to see a copy of the law
7 MS. BAUMGARDNER: Objection.	7 to refresh my memory.
8 A. No. I could at any time. It is my	8 MS. BAUMGARDNER: Just to be complete,
9 husband and me, and we're way overage. We could	9 objection. I think that isn't a complete list
10 almost fall into the granny group.	10 of her testimony, but the transcript will speak
11 Q. Just for the record, how old are you?	11 for itself. I think she identified other areas
12 A. 63.	12 as well.
13 MS. BAUMGARDNER: You are under oath.	13 Barbara, do you need a break?
14 THE WITNESS: OK. I should have said	14 THE WITNESS: What time is it?
15 50.	15 MR. BLADUELL: It is 1:50.
16 Q. Is that the only sale of your	16 THE WITNESS: I can wait a little bit
17 photographs of you and your husband that has	17 longer. Thank you.
18 happened?	18 Q. Has anyone ever contacted you from the
19 A. Yes.	19 government saying that they wanted to conduct an
20 Q. Have these photographs been exhibited?	20 inspection of your records under 2257?
21 A. No.	21 A. No.
22 Q. Have these photographs been posted	22 Q. Why haven't you made any other
23 online?	23 photographs, any other depictions of sexually
24 A. No.	24 explicit conduct since 1995?
25 Q. Are these photographs that you want to	25 MS. BAUMGARDNER: That has not been
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1 Alper	1 Alper
2 publish in the compilation that you have	2 her testimony.
3 mentioned?	3 Q. Other than the photographs of you and
4 A. Conceivably.	4 your husband, why have you not made any other
5 Q. Have you contacted any publisher about	5 photographs of sexually explicit conduct since
6 a specific project that would involve a	6 1995?
7 compilation such as you have described?	7 A. Partly because the restrictions of the
8 A. Not yet.	8 ID and lack of anonymity with the 2257 ruling.
9 Q. So going back, just to summarize	9 Q. How did you become aware of those
10 regarding the 2257 requirements, you've	10 requirements?
11 mentioned your understanding of the requirements	11 A. Through people I know.
12 that would apply to the compilation that you	12 Q. When did you become aware of them?
13 have described and the IDs of individuals in	13 A. I don't remember exactly. In
14 your pre-1995 work, correct?	14 addition, I have also had other projects I have
15 A. Yes.	15 been working on. As I indicated before, I have
16 Q. And you have described a concern with	16 different projects in my work.
17 the inspections, correct?	17 Q. Why did you stop taking photographs at
18 A. Yes.	18 S & M clubs?
19 Q. And you have described a concern with	19 A. Because they were closed.
20 ID, including the names and IDs of individuals	20 Q. Why did they close?
21 with the exhibited work?	21 MS. BAUMGARDNER: Objection.
22 A. Yes.	22 Q. Was there some --
23 MS. BAUMGARDNER: Objection.	23 A. There was AIDS, and I think that might
24 Q. In your understanding of these	24 help define reasons why the clubs closed.
25 requirements, are there any other aspects of	25 Q. So the fact that you stopped taking

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<p>1 Alper 2 MS. BAUMGARDNER: Yes. I object. I 3 don't want the -- 4 MS. WYER: Are you objecting to her 5 answer? 6 MS. BAUMGARDNER: Yes, I am. I don't 7 want her to guess. I don't think you want her 8 to guess. Can you give an estimate? 9 Q. Can you say with any certainty that 10 you have ever been to Fire Island more than five 11 times in a year? 12 A. Probably not. 13 Q. Meaning you can't say with any 14 certainty or you probably have not been to Fire 15 Island? 16 A. I probably have not been more than -- 17 oh, so when I go out, I might go for a weekend 18 or I might go for a week. So that's where it 19 gets -- the question is too broad. I can't say 20 how many times I've been because it doesn't 21 mean -- it could be days or it could be a week. 22 Q. On any of these occasions when you 23 have gone to Fire Island and seen people having 24 sex outside, have you ever attempted to ask 25 those individuals if you could photograph them?</p>	<p>1 Alper 2 MS. WYER: OK. 3 MS. BAUMGARDNER: I think it requires 4 me to say that. 5 Q. Have you ever sent any of these 6 photographs to anyone by e-mail? 7 A. For publication in Finland -- not in 8 Finland, in Norway. It's Norway or Sweden for 9 Cupido. 10 Q. Have you ever sent any of the 11 photographs of you and your husband engaged in 12 sexual conduct by text message? 13 A. No. 14 Q. Have you ever posted any of these 15 photographs on a social networking site? 16 A. No. 17 Q. Do you have a Facebook account? 18 A. I do. 19 Q. Do you consider that work related? 20 A. I don't know what I consider it. I 21 rarely go to it. I can't figure it out. That's 22 what I think of Facebook. 23 Q. Your circle of friends, do you think 24 that they are very active in Facebook? 25 A. Maybe some more than others.</p>
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<p>1 Alper 2 A. No. 3 Q. So you don't know if they would agree 4 or not, correct? 5 A. With pretty fair certainty I know that 6 they would not agree. 7 Q. What is that based on? 8 A. They are having anonymous sex. 9 Q. So you don't think that they want to 10 be photographed, is that right? 11 A. I can say with a fair amount of 12 certainty that they would not want to reveal 13 their identity for any formal record. 14 Q. So if you were to take these 15 individuals' photographs without checking their 16 IDs how would you know whether they were 18 or 17 over? 18 A. I wouldn't. 19 Q. You have already mentioned that you 20 have taken photographs of you and your husband. 21 Have these photographs been of you and your 22 husband having sex? 23 A. Yes. 24 MS. BAUMGARDNER: Excuse me. Just for 25 the record, this is protected information.</p>	<p>1 Alper 2 Q. And are you generally aware of 3 whether -- never mind that. 4 MS. WYER: Can we take a break just so 5 we can confer? 6 MS. BAUMGARDNER: Sure. 7 (Recess) 8 Q. How did you become a plaintiff in this 9 case? 10 A. Honestly, I don't remember exactly. 11 I think possibly one of the other 12 plaintiffs gave my name knowing the kind of 13 pictures that I have shot. I think that's how 14 it came about. 15 Q. Are you personally acquainted with any 16 of the other plaintiffs in the case? 17 A. Yes. 18 Q. Which ones? 19 A. Barbara Nitke, David Steinberg, Betty 20 Dodson. I can't remember who else is involved. 21 MS. BAUMGARDNER: She's identified 22 Victor Perlman and Eugene Mopsik in her earlier 23 testimony. 24 Q. So Eugene Mopsik and Victor Perlman as 25 officers and representative of ASMP?</p>

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<p>1 Alper 2 requirements? 3 A. I haven't spoken to any publishers 4 about it. 5 Q. Do you have any other concerns 6 regarding the 225and 2257A requirements that you 7 haven't identified here? 8 A. I don't remember all of the details of 9 those two to be able to say. 10 Q. But nothing stands out in your mind as 11 something that you are particularly concerned 12 about that you haven't mentioned? 13 A. I don't remember all the details to be 14 able to respond. 15 Q. But you have identified certain 16 things, so I assume that those issues are the 17 ones that stand out in your mind as a concern? 18 A. Yes. 19 MS. WYER: I think that's it. 20 THE WITNESS: Terrific. 21 MS. BAUMGARDNER: OK. I would like to 22 ask a follow-up question if I may. 23 EXAMINATION 24 BY MS. BAUMGARDNER: 25 Q. Ms. Alper, you were asked about</p>	<p>1 Alper 2 discovery that we call interrogatories, have you 3 not? 4 A. Say the question again. 5 Q. You recall that the government asked 6 you certain questions and you had to write down 7 on paper? 8 A. Right. 9 Q. Then you reviewed your answers after 10 consulting with me? 11 A. Yes. 12 Q. Then you swore to the truth and 13 accuracy of those answers? 14 A. Yes. 15 Q. So, in addition to your testimony here 16 as far as any concerns and problems you have, 17 you also adopt what you have said in the written 18 discovery to the government? 19 A. Oh, yeah. Yeah, absolutely. 20 MS. BAUMGARDNER: That is all I have. 21 MS. WYER: We have follow-up. 22 EXAMINATION 23 BY MS. WYER: 24 Q. In regard to what you just said about 25 being able to visually determine whether someone</p>
<p>1 Alper 2 photographing the people you said you observed 3 having sex on Fire Island. 4 A. Right. 5 Q. Kathy will correct me if I'm wrong, if 6 I misphrase this, but I believe you were asked 7 without checking their IDs, there was no way for 8 you to know that they were over 18. 9 MS. BAUMGARDNER: Have I phrased that 10 fairly, Ms. Wyer? Was that the question to her? 11 MS. WYER: I think we would have to go 12 back and look at the transcript. 13 MS. BAUMGARDNER: I believe, if you 14 accept it, something like that, and you said 15 there wasn't. 16 Q. Is there any other way that you could 17 tell, apart from checking someone's photo ID, to 18 establish whether they were an adult or not? 19 A. Yes. I could tell by visually I could 20 tell that they weren't teenagers. 21 Q. As far as identifying all of the 22 burdens and issues you have with 2257 and 23 compliance, you have identified other, a 24 complete issue after consulting with your legal 25 counsel in responding to the government's paper</p>	<p>1 Alper 2 was a teenager, with what degree of accuracy do 3 you believe you can determine someone's age by 4 looking at them? 5 MS. BAUMGARDNER: Objection. That 6 wasn't her testimony. 7 A. I think I can fairly accurately tell 8 if somebody is a teenager or not. 9 Q. By a teenager, do you mean anyone 10 between the age of 13 and 19? 11 A. Anyone under the age of 18. 12 Q. Can you tell by looking at someone 13 whether they are 17 or 18? 14 A. Probably not. 15 Q. Do you think you can tell by looking 16 at someone whether they are 17 or 19? 17 MS. BAUMGARDNER: Objection. 18 A. Maybe. I have absolutely no interest 19 in photographing anyone who is underage. I have 20 no interest in child pornography. I am totally 21 opposed to it. I have no interest at all in 22 engaging anyone who is not of legal age, period. 23 Q. Do you think that people under the age 24 of 18 have sex? 25 A. I think there are news reports that</p>

March 14, 2013

1 Alper 2 people under the age of 18 have sex. I don't 3 have any doubt. 4 Q. Is there any reason for you to assume 5 no one under the age of 18 ever has sex outside? 6 A. I have no idea. 7 Q. So, as far as you know, people under 8 the age of 18 may have sex outside? 9 A. I have no idea. But the area that I 10 go to, the area where we are talking about on 11 Fire Island is not a teenage hangout. It is a 12 place where adults go. It's not teenagers who 13 go there. 14 Q. Is there any person at the entrance to 15 this area checking IDs? 16 A. It is an island, it is a public space, 17 but it is a residential space, so it's not a 18 public beach. I mean, it's -- it's too 19 complicated. It is an island. 20 Q. Are people under the age of 18 21 prohibited from visiting the island? 22 A. No. 23 Q. So, as far as you know, there may be 24 people under the age of 18 on the island? 25 A. There are families, but there are	Page 85 1 Alper 2 30? 3 MS. BAUMGARDNER: Objection. 4 A. Maybe. Probably. 5 Q. Does it depend on the person? 6 MS. BAUMGARDNER: Objection. 7 A. Yes. 8 Q. Do you have any specialized training 9 in identifying someone's age by looking at them? 10 A. Is there such a thing? 11 Q. Is the answer no? 12 A. No. 13 MS. WYER: I think that's all. 14 MS. BAUMGARDNER: OK. Thank you very 15 much. 16 THE WITNESS: Thanks. 17 MS. BAUMGARDNER: I think we'll read, 18 Sam. 19 (Deposition concluded at 3:15 p.m.) 20 21 BARBARA ALPER 22 Subscribed and sworn to 23 before me this day 24 of , 2013. 25 _____	Page 87 1 Alper 2 30? 3 MS. BAUMGARDNER: Objection. 4 A. Maybe. Probably. 5 Q. Does it depend on the person? 6 MS. BAUMGARDNER: Objection. 7 A. Yes. 8 Q. Do you have any specialized training 9 in identifying someone's age by looking at them? 10 A. Is there such a thing? 11 Q. Is the answer no? 12 A. No. 13 MS. WYER: I think that's all. 14 MS. BAUMGARDNER: OK. Thank you very 15 much. 16 THE WITNESS: Thanks. 17 MS. BAUMGARDNER: I think we'll read, 18 Sam. 19 (Deposition concluded at 3:15 p.m.) 20 21 BARBARA ALPER 22 Subscribed and sworn to 23 before me this day 24 of , 2013. 25 _____
1 Alper 2 communities and areas that are a family 3 community or not a family community. 4 Q. This area where you observed people 5 having sex outside, is there any fence around 6 this area? 7 A. No. 8 Q. Is there any checkpoint that someone 9 has to pass in order to access this area? 10 A. No. 11 Q. Do you think that you can tell by 12 looking whether someone is 30 or 40? 13 MS. BAUMGARDNER: Objection. 14 A. Maybe. 15 Q. Does it depend on the person? 16 A. Yes. People differ. 17 Q. Can you tell whether someone is 40 or 18 55? 19 MS. BAUMGARDNER: Objection. 20 A. No. 21 Q. Can you tell whether someone is 25 or 22 30? 23 MS. BAUMGARDNER: Objection. 24 A. No. 25 Q. Can you tell whether someone is 20 or	Page 86 1 Alper 2 30? 3 MS. BAUMGARDNER: Objection. 4 A. Maybe. Probably. 5 Q. Does it depend on the person? 6 MS. BAUMGARDNER: Objection. 7 A. Yes. 8 Q. Do you have any specialized training 9 in identifying someone's age by looking at them? 10 A. Is there such a thing? 11 Q. Is the answer no? 12 A. No. 13 MS. WYER: I think that's all. 14 MS. BAUMGARDNER: OK. Thank you very 15 much. 16 THE WITNESS: Thanks. 17 MS. BAUMGARDNER: I think we'll read, 18 Sam. 19 (Deposition concluded at 3:15 p.m.) 20 21 BARBARA ALPER 22 Subscribed and sworn to 23 before me this day 24 of , 2013. 25 _____	Page 86 1 Alper 2 30? 3 MS. BAUMGARDNER: Objection. 4 A. Maybe. Probably. 5 Q. Does it depend on the person? 6 MS. BAUMGARDNER: Objection. 7 A. Yes. 8 Q. Do you have any specialized training 9 in identifying someone's age by looking at them? 10 A. Is there such a thing? 11 Q. Is the answer no? 12 A. No. 13 MS. WYER: I think that's all. 14 MS. BAUMGARDNER: OK. Thank you very 15 much. 16 THE WITNESS: Thanks. 17 MS. BAUMGARDNER: I think we'll read, 18 Sam. 19 (Deposition concluded at 3:15 p.m.) 20 21 BARBARA ALPER 22 Subscribed and sworn to 23 before me this day 24 of , 2013. 25 _____

In The Matter Of:

*FREE SPEECH COALITION, INC v
THE HONORABLE ERIC H. HOLDER*

March 15, 2013

*SOUTHERN DISTRICT REPORTERS
500 PEARL STREET
NEW YORK, NY 10007
212 805-0330*

March 15, 2013

Page 1		Page 3	
1	Dodson	1	Dodson
2	UNITED STATES DISTRICT COURT	2	BETTY DODSON,
3	EASTERN DISTRICT OF PENNSYLVANIA	3	called as a witness by Defendant,
4	-----x	4	having been duly sworn, testified as follows:
5	FREE SPEECH COALITION, INC. et	5	EXAMINATION
6	al.,	6	BY MR. BLADUELL:
7	Plaintiffs,	7	Q. Good afternoon, Ms. Dodson.
8	v.	8	As I said, my name is Hector Bladuell.
9	THE HONORABLE ERIC H. HOLDER,	9	I represent the government in this lawsuit.
10	Defendant.	10	This is a challenge to the constitutionality of
11	-----x	11	Section 2257 under the First and Fourth
12	March 15, 2013	12	Amendments.
13	12:50 p.m.	13	Ms. Dodson, have you been deposed
14	Deposition of BETTY DODSON, taken by	14	before?
15	Defendant, at the United States Attorney's	15	A. Deposed? Yes.
16	Office, One St. Andrew's Plaza, New York, New	16	Q. And can you tell us in what instance
17	York, before Samuel G. Mauro, Jr., a Registered	17	when have you been deposed before?
18	Merit Reporter and Notary Public of the State of	18	A. It was so long ago; it was ages ago.
19	New York.	19	It was a lawsuit for a company that had a
20		20	construction on the sidewalk.
21		21	Q. It was not related to sexually
22		22	explicit images?
23		23	A. It was what?
24		24	Q. Not related to sexually explicit
25		25	images?
Page 2		Page 4	
1	Dodson	1	Dodson
2	A P P E A R A N C E S	2	A. Nothing, no.
3		3	Q. The overall purpose of this deposition
4	BERKMAN, GORDON, MURRAY & DEVAN	4	is not to discuss the merits of your claim. The
5	Attorneys for Plaintiffs	5	purpose is for us to ask you questions so we can
6	55 Public Sq., Ste. 2200	6	understand better your claim. If you don't
7	Cleveland, OH 44113-2000	7	understand a question that I ask, please ask me
8	BY: LORRAINE BAUMGARDNER, ESQ.	8	to clarify --
9		9	A. Oh, I will.
10		10	Q. And I will rephrase or ask it again.
11	United States Department of Justice	11	-- your counsel, Ms. Baumgardner here,
12	Civil Division, Federal Programs Branch	12	will make objections to some of my questions.
13	Attorneys for Defendant	13	Unless she instructs you not to answer, you can
14	20 Massachusetts Avenue, N.W.	14	answer the question.
15	Room 7130	15	A. OK.
16	Washington, DC 20530	16	Q. I understand that you have a hearing
17	BY: KATHRYN WYER, ESQ.	17	impairment, correct?
18	HECTOR G. BLADUELL, ESQ.	18	A. I have my hearing aids all the way up,
19		19	but it's still difficult.
20	ALSO PRESENT: Carlin Ross	20	Q. Does your hearing impairment affect
21		21	your ability to remember details about things
22		22	that happened before?
23		23	A. No.
24		24	Q. Are you under any medication that
25		25	would impair your ability to remember?

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Page 5		Page 7	
1	Dodson	1	Dodson
2	A. No, I take no meds.	2	A. Yes.
3	Q. No medical condition that would impair	3	Q. That you run?
4	your ability to remember?	4	A. Yes.
5	A. None.	5	Q. What is the name of the company?
6	Q. Now, Ms. Dodson, have you prepared for	6	A. Bad Media. Those are my initials.
7	this deposition?	7	Q. You are the president of Bad Media?
8	A. Have I been what?	8	A. I'm the founder.
9	Q. Prepared?	9	Q. The founder?
10	A. Yes.	10	A. Yeah.
11	Q. Can you describe the steps that you	11	Q. When did you start Bad Media?
12	took to prepare for the deposition.	12	A. Five years ago, approximately.
13	A. Well, you asked a lot of questions,	13	Q. So 2008, approximately?
14	and we discussed it, yes.	14	A. See, it is very difficult for me to
15	Q. By "you," you mean your counsel?	15	remember dates. You know, ask me anything about
16	A. Yes.	16	sex and I've got it nailed. Date, I don't know.
17	Q. Ms. Baumgardner?	17	She knows dates.
18	A. Yes.	18	Q. Before founding Bad Media, what did
19	Q. Did you review any documents in	19	you do?
20	connection with your preparation?	20	A. Same thing. I had a website, and I
21	A. Documents, no.	21	was teaching and I ran workshops and I had
22	Q. You didn't read any documents to	22	private sessions.
23	prepare for the deposition?	23	Q. Do you remember the name of the
24	A. No, I didn't.	24	website?
25	Q. Did you make any notes to prepare for	25	A. Betty Dodson.
Page 6		Page 8	
1	Dodson	1	Dodson
2	the deposition?	2	Q. Betty Dodson. OK.
3	A. None.	3	Do you have a college degree?
4	Q. Could you please describe what your	4	A. Yes. And I also have a Ph.D. from a
5	current occupation is.	5	private school in San Francisco.
6	A. Yes. I am a sex educator, and I am	6	Q. Where did you go to college?
7	answering questions on a website that I run with	7	A. Wichita University.
8	my partner, Carlin.	8	Q. Wichita?
9	Q. By sex educator, what do you mean?	9	A. Wichita University.
10	A. I am a Ph.D. sexologist, and I have	10	Q. Is that in Kansas?
11	been teaching women about orgasms for the last	11	A. Nowhere else.
12	40-some years.	12	Q. What was your major?
13	Q. Do you also produce sexually explicit	13	A. Art.
14	images?	14	Q. What do you mean by art?
15	A. I have in the past, yes.	15	A. Oh, wait a minute. I didn't
16	Q. When you say in the past, what date	16	matriculate at the university. Then I came to
17	ranges?	17	New York and I went to art school for five
18	A. Well, all right. Just let me think a	18	years. You don't matriculate in art school. I
19	minute. I produced videotapes, DVDs in the	19	got a lot of scholarships.
20	'90s. And I think we had one -- when did that	20	Q. OK. But in this university in Kansas
21	one come out the recent --	21	that you said --
22	MS. ROSS: I can't really answer.	22	A. Yes.
23	A. Oh, there was one that we produced a	23	Q. -- what was your major?
24	couple of years ago.	24	A. Art.
25	Q. Do you have a company?	25	Q. Art meaning?

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Page 25		Page 27	
1	Dodson	1	Dodson
2	Q. Did I read that accurately?	2	A. Go ahead.
3	A. Yes, you read it correctly.	3	Q. About the deposition. Do you have a
4	Q. This is something that you wrote?	4	question about the deposition?
5	A. Yes, I did.	5	A. I don't know what you mean.
6	Q. Now, you had a basis for writing this,	6	Q. The deposition?
7	correct?	7	MS. ROSS: Do you have a question
8	A. It is just what I told you. Yes.	8	about what's going on right now?
9	Q. I mean you didn't make this up,	9	THE WITNESS: No.
10	correct?	10	Q. OK.
11	A. Make it up?	11	A. Except it's boring.
12	Q. Yes. Is it correct you did not make	12	Q. Do you have an office?
13	this up?	13	A. I work in my home.
14	A. Well, I made it up, but it's the	14	Q. And your home has how many rooms?
15	truth.	15	A. A foyer, a living room, a kitchen, and
16	Q. It's the truth. OK.	16	a back room, bedroom, bedroom/office?
17	You didn't -- it is not a lie, it's a	17	Q. Is that where you keep your 2257
18	hundred percent?	18	records?
19	A. It is a fact.	19	A. Yes. It's out in the foyer in a
20	Q. It is a fact. OK.	20	separate unit.
21	A prepubescent girl, do you know what	21	Q. Do you keep the IDs of your performers
22	age is a prepubescent girl?	22	there?
23	A. Anywhere between, I don't know, 12 to	23	A. Absolutely. This is way before 2257.
24	18.	24	Q. Do you keep the model releases there
25	Q. 12 to 18.	25	as well?
Page 26		Page 28	
1	Dodson	1	Dodson
2	Prepubescent is before puberty? Is	2	A. Yes, it's in a filing cabinet.
3	that what it means?	3	Q. Do you keep any 2257 records outside
4	A. You know, I really don't know what	4	of this cabinet?
5	prepubescent means. That's Grant. That was my	5	A. No.
6	editor at the time. It's the youth culture that	6	Q. Everything is in the cabinet?
7	everyone is addicted to. And I know where	7	A. Yes.
8	you're going with this, which is a lot of crap.	8	Q. This cabinet is not in your bedroom?
9	But men don't like contemporary or older women.	9	A. It's in the foyer, in the front room.
10	They want children or younger women, because	10	Q. Do you have a studio?
11	they can pull the wool over their eyes, because	11	Do you have a studio where you record
12	then this young girl -- whatever. But I got	12	videos?
13	news for you. Some children at five are already	13	A. No, it's always done in my living
14	sexual, not with a partner but with themselves.	14	room. So it is a living room/workshop
15	So what are you getting at here?	15	space/studio.
16	Q. I get to ask the questions.	16	Q. Most of your sexually explicit
17	A. "I get to ask the questions."	17	depictions are about masturbation?
18	MS. BAUMGARDNER: OK, Betty.	18	A. Female orgasm.
19	Go ahead. Pose your question.	19	Q. Female orgasm. Would it be accurate
20	Q. Do you have a question?	20	to say that 99 percent of them are about that?
21	A. Do I have one?	21	A. Uh-huh.
22	Q. Yes.	22	MS. BAUMGARDNER: Betty, you have to
23	A. I thought you were going to ask me	23	answer yes or no because the court reporter
24	one.	24	can't take down.
25	Q. Yes.	25	THE WITNESS: You can't say she nodded

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<p>1 Dodson</p> <p>2 expertise in telling someone's age by visual</p> <p>3 observation?</p> <p>4 A. No, I do not. I'm not an expert at</p> <p>5 telling age. My expertise is sexuality.</p> <p>6 Q. I'm going to show you other documents</p> <p>7 if I can find them. Just give me a second.</p> <p>8 MS. BAUMGARDNER: Betty, do you need</p> <p>9 to take a break at all?</p> <p>10 Q. Do you want to take a break?</p> <p>11 A. Let's take a break and stretch.</p> <p>12 MR. BLADUELL: OK. We will take a</p> <p>13 break.</p> <p>14 (Recess)</p> <p>15 MR. BLADUELL: So, for the record, we</p> <p>16 took a little break. We are back.</p> <p>17 Q. Ms. Dodson, before the break you were</p> <p>18 talking about your production of videos,</p> <p>19 correct?</p> <p>20 Do you remember?</p> <p>21 A. No, but I'll take your word for it.</p> <p>22 Q. Is there a reason you don't remember?</p> <p>23 A. It's probably because I smoked too</p> <p>24 much dope, short-term memory loss.</p> <p>25 Q. Do you suffer from short-term memory</p>	<p>1 Dodson</p> <p>2 one is teaching it.</p> <p>3 Q. Would that involve the production of</p> <p>4 images, sexually explicit images?</p> <p>5 A. It might, yes.</p> <p>6 Q. Publishing them?</p> <p>7 A. It might.</p> <p>8 Q. But you are not sure yet?</p> <p>9 A. Well, I will definitely need images of</p> <p>10 the female and the male genitalia -- genitalia,</p> <p>11 that's so funny -- sex organs.</p> <p>12 Q. How many images?</p> <p>13 A. Millions.</p> <p>14 Q. You would need millions of images?</p> <p>15 A. Thousands, hundreds. Enough to show a</p> <p>16 variation, so that people don't have a fixed</p> <p>17 image.</p> <p>18 Q. How much is enough to show a</p> <p>19 variation?</p> <p>20 A. I'll let you know when I do it. I</p> <p>21 have no idea.</p> <p>22 Q. How many different varieties of --</p> <p>23 A. Infinite. Infinite variety. I would</p> <p>24 need to show you enough so that you would</p> <p>25 understand that it was an infinite. It's like</p>
<p>Page 50</p>	<p>Page 52</p>

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	Page 77	Page 79
1	Dodson	Dodson
2	perfectly nice people.	
3	MS. BAUMGARDNER: I would like to	3 WITNESS: BETTY DODSON
4	think so.	4 EXHIBITS
5	Q. Remember the list, the long list of	5 Description Page
6	websites and things?	6 RD-9 64
7	A. I'm taking that with me.	7 RD-10 66
8	Q. It is your understanding this was a	8
9	document that we worked together on and you did	9
10	not prepare that list, correct?	10
11	A. No, I didn't.	11
12	Q. And the very beginning question	12
13	indicates that you and Carlin, with the	13
14	assistance of counsel answered the	14
15	interrogatories?	15
16	A. The what. The inter who?	16
17	Q. These.	17
18	A. Oh.	18
19	Q. Who answered them? It was the three	19
20	of us, correct?	20
21	A. OK.	21
22	Q. You understood that?	22
23	A. I guess.	23
24	MS. BAUMGARDNER: All right. That is	24
25	all I have.	25
	Page 78	Page 80
1	Dodson	Dodson
2	MR. BLADUELL: I have two questions.	CERTIFICATE
3	EXAMINATION	3 STATE OF NEW YORK)
4	BY MR. BLADUELL:	4 : ss
5	Q. Ms. Dodson, do you know anyone who has	5 COUNTY OF NEW YORK)
6	been criminally prosecuted for a violation of	6 I, Samuel Mauro, Jr., a Registered
7	the age verification requirement?	7 Merit Reporter and Notary Public within and for
8	A. Personally, no.	8 the State of New York, do hereby certify:
9	Q. Do you know anyone who is in jail	9 That BETTY DODSON, the witness whose
10	right now because of a violation of the age	10 deposition is hereinbefore set forth, was duly
11	verification requirements?	11 sworn by me and that such deposition is a true
12	A. No.	12 record of the testimony given by such witness.
13	MR. BLADUELL: Thank you.	13 I further certify that I am not
14	MS. BAUMGARDNER: I do.	14 related to any of the parties to this action by
15	THE WITNESS: Is that it?	15 blood or marriage and that I am in no way
16	MS. BAUMGARDNER: That's it.	16 interested in the outcome of this matter.
17	(Deposition concluded at 2:40 p.m.)	17 In witness whereof, I have hereunto
18		18 set my hand this _____ day of
19		19 _____ 2 _____. 20
21		21
22		22
23		23
24		24 SAMUEL G. MAURO, RMR
25		25

In The Matter Of:

Free Speech

v.

The Honorable Eric H. Holder, Jr.

Jeffrey J. Douglas VOL I

April 9, 2013



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number of pages 209

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1 participate in the legal committee?

2 A I don't think so.

3 Q How many members does Free Speech Coalition have
4 currently?

5 A Probably about 800. That's best guess.

6 Q Can you describe the membership?

7 A Categories of members? The various business
8 interests are one category -- so manufacturers,
9 distributors, retailers. Each of those are categories.
10 They are often divided. For instance, retailers are
11 divided between brick and mortar and online. I think we
12 probably distinguish between producers that produce
13 entirely for the Internet. Toy manufacturers are separate
14 category. Attorneys and talent agents are a separate
15 category. Performing artists are a separate category, and
16 then there's another membership group that are just
17 individual industry professionals. So if I am a lighting
18 engineer or makeup artist, I would join in that category.

19 Q How does someone become a member?

20 A Fill out an application and provide a dues
21 payment.

22 Q These days is that usually done online or?

23 A Yes.

24 Q Do you know?

25 A Yes.

1 A An individual's membership would necessarily be
2 less expensive than a business's. And because of a
3 perception of -- well, for instance, as I said a camera
4 person would necessarily pay a smaller amount of dues than
5 a manufacturer. I think performers, the dues is \$50. I'm
6 not sure. It might be more than that but a relatively
7 small amount of money.

8 Q Are the dues determined by category --

9 A Yes.

10 Q -- of profession? Is there a schedule of dues?

11 A Yes.

12 Q Is that on the Web site?

13 A Probably. Should be. I don't know.

14 Q Are there any categories where members are not
15 required to pay dues?

16 A You can -- not a member in the bylaws sense of
17 having voting privileges, no. But if you want to donate
18 money to the organization, get copies of electronic
19 newsletters, there's -- I don't know what we call it, but
20 it's sort of, you know, interested person membership
21 category. I think it's \$25 or something like that.

22 Q But that still requires a fee?

23 A I don't think it really does. Just sort of a
24 recommended donation. But since there's no specific
25 rights that are associated with the status, it's just

Page 26

Page 28

1 Q Okay.

2 A Yes.

3 Q Has anyone been rejected as a member that you
4 know?

5 A I don't know that that has happened. I'm not
6 certain.

7 Q Are members required to pay dues?

8 A Yes.

9 Q Looking at the bylaws where it talks about
10 membership dues.

11 A I assure you in the amended bylaws there would be
12 page numbers.

13 Q Have you found it?

14 A I don't know what I'm looking for. I'm sorry.

15 MS. BAUMGARDNER: Is it a section on dues?

16 BY MS. WYER:

17 Q I think it's on membership. Okay. On Section 3
18 on the second page.

19 A Dues, fees, and assessments.

20 Q It says "Dues, fees, and assessments shall vary
21 by each member depending upon such member's position in
22 the industry and as determined by the board and * its
23 reasonable discretion"; is that right?

24 A Yes. Yes.

25 Q What does that mean?

1 that, you know, someone wants to support the organization
2 is interested in our work. They can essentially become an
3 affiliate something or other, something along those lines,
4 but it carries no rights or responsibility.

5 Q So technically -- but those individuals are not
6 actually members?

7 A They are not members within the meaning of the
8 bylaws. That is, they get a right to vote and other
9 privileges.

10 Q On what basis would a member be suspended?

11 A I never ran into it; so I don't know. You know,
12 I have an imagination; so I can probably come up with
13 something. But I don't know in real life. It hasn't
14 happened.

15 Q It's never happened?

16 A Not that I know of.

17 Q How does the Free Speech Coalition communicate
18 with its member?

19 A Not as well as we'd like. We have an e-mail that
20 goes out regularly on Fridays, reasonably consistently
21 that provides news that we believe would be of interest.
22 So some of that involves actual activities of Free Speech
23 Coalition, other might be just trade information. You
24 know, a big merger or something. There's a lot of -- we
25 send out links to news articles that we believe would be

7 (Pages 25 to 28)

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1 sexuality. And so like many pejorative phrases or terms,
 2 the object of the hostility often adopts them as a form of
 3 self-protection. So it is unlikely, for instance, that
 4 African Americans would call themselves "niggers" but for
 5 the fact as it was used as hostile for so many years. And
 6 so as a form of self-protection, you take it on and make
 7 it your own.

8 So hardcore pornography was a term, I believe,
 9 that was developed to try to distinguish and denigrate one
 10 portion of the entertainment industry from the rest of the
 11 entertainment industry. That is, when major studios are
 12 making substantial donations to members of Congress, even
 13 though there's a substantial amount of nudity and emphasis
 14 on human sexuality in their works, if -- to the extent
 15 that they are part of the mainstream culture, a politician
 16 would have -- in the broadest sense of the term, someone
 17 who is an advocate whether they are elected official or
 18 not -- has a need to distinguish between the good guys and
 19 the bad guys, and hard core pornography was a way to
 20 distinguish because the more serious hostiles to
 21 depictions of human sexuality want to still criticize
 22 Hollywood for undermining Western civilization by showing
 23 an unclothed body. But the primary source of the
 24 hostility was the -- what we know of the adult industry,
 25 the sort of stepchild of the rest of entertainment. And

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1 so that is how the term of hardcore and soft core evolved.
 2 Still want to condemn, but you want to make the
 3 particularly savage condemnation targeted. Does that
 4 answer the question?

5 So anyway, pornography is a term almost entirely
 6 without a definition. That is, if you go across the
 7 political --

8 Q Spectrum?

9 A Thank you. The political spectrum, you --
 10 pornography would include, on one extreme, a short skirt
 11 worn by a woman, not a very, very short skirt but
 12 revealing -- perhaps going above the knee and going all
 13 the way to pornography would be limited to explicit
 14 depictions of genitals.

15 Since the term is defined as the writing of
 16 prostitutes in its original form, pornography means
 17 nothing. If you go to a dictionary, the range of
 18 definitions that are found in dictionaries and
 19 encyclopedia -- they're all over the map. When you take a
 20 word that has such an ill-defined definition -- that is so
 21 ill-defined and then you crop it to be porn, you reduce
 22 its meaning substantially more. And then you use a phrase
 23 like hardcore that means nothing, it's just -- I mean,
 24 it's a reflection of what is sexually stimulating, and
 25 there is an infinite variety of what people find sexually

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1 stimulating. It's just why advertisers make so much
 2 money.

3 Q So does the adult industry include -- is your
 4 understanding of the phrase "adult industry" broader than
 5 what you think is referenced by the term "hardcore porn"
 6 or is it --

7 A It depends -- it depends on who's using the term
 8 "hardcore porn." Robert T. Chowers, the former head of
 9 the child exploitation and obscenity section believed that
 10 a bare breast was hardcore pornography. Most people
 11 wouldn't use that term to encompass that. So it depends
 12 on who's doing the talking. If you tell me what you mean
 13 by "hardcore pornography," then I will tell you whether or
 14 not that -- how that fits into the adult entertainment
 15 industry.

16 Q So you know what the adult entertainment industry
 17 is, or is that term equally broad?

18 A No. I would think the adult entertainment
 19 industry is made up of people who view themselves as being
 20 members of the adult entertainment industry. That is, for
 21 instance, for many years the -- I don't know what the
 22 title was. But Hugh Hefner's daughter, Christie, who ran
 23 what was known as the "empire" within the Playboy
 24 business, said they weren't pornographers. They weren't
 25 part of the adult industry. They were lifestyle.

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1 So for all intents and purposes, they weren't a
 2 member of the adult entertainment industry because by
 3 self-definition they weren't. Most consumers and critics
 4 of the industry regarded them as the adult entertainment
 5 industry because they didn't like them or did like them.
 6 When something doesn't have a real definition, then
 7 self-definition is what it is.

8 You know, in a more serious area, when Sammy
 9 Davis, Jr., announced that he was a Jew, there was a very,
 10 very broad and intense reaction to that solely on the
 11 grounds of his skin color. So by various traditions
 12 within various portions of the Jewish community he was or
 13 wasn't a Jew. Because some believe that, if your mother
 14 isn't Jewish, you're not Jewish. You can't really
 15 convert. Others say if you go through, you know, certain
 16 number of classes and make certain pledges, then you're a
 17 Jew. So a Jew is someone who thinks they're a Jew,
 18 self-defined. That's what being a member of the adult
 19 entertainment industry is.

20 Q Why do you think Hugh Hefner's -- did you say
 21 daughter? Why do you think Hugh Hefner's daughter
 22 redefines the empire as lifestyle?

23 A You would have to ask her. Presumably she
 24 thought it would make more money, but I have no idea why.

25 Q What is Free Speech Coalition's understanding of

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1 the term adult industry? Is it the same as yours?

2 A I don't -- the Free Speech Coalition is not -- is
 3 a legal entity. It exists only because -- you know,
 4 whatever it was, somebody came with the idea of a
 5 corporation. So the Free Speech Coalition's views are
 6 either the collective set of the members, collective set
 7 of directors, collective set of members or staff. You
 8 know, I've been elected a lot. So presumably people's
 9 ideas are the same as mine, but I don't know. I'm sorry.
 10 I don't think that means anything to say what is the Free
 11 Speech Coalition's view on what adult entertainment is.
 12 It differs from person to person and probably director to
 13 director. What I said is likely a widely held view by
 14 members and directors, but I don't know.

15 Q So the Free Speech Coalition would not ever
 16 reject a member on the ground that that entity or person
 17 was not a part of the adult entertainment industry?

18 A Well, yes, that is probably correct. I mean,
 19 again I have an imagination. I probably could come up
 20 with something. But if the American Nazi party said they
 21 wanted to join the Free Speech Coalition, there would
 22 probably be some discussions on the board. On the other
 23 hand, if a packaging company or a communications
 24 company -- someone that manufacturers handsets -- wanted
 25 to join the Free Speech Coalition, we would welcome them

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1 as members if they paid their dues because they are
 2 providing support for the adult entertainment industry,
 3 and their rationale for joining would be because an
 4 important portion of their clientele was the adult
 5 entertainment industry.

6 Q That's what you would assume?

7 A Yes. I mean, it might be that a CEO of a company
 8 that has nothing to do with the entertainment industry
 9 believes passionately in adult entertainment, wants to
 10 avoid government intrusion. If the government wanted to
 11 join, we would welcome them. We have no secrets.

12 Q Do you happen to know what the dues are for a
 13 production company, for example?

14 A I would characterize myself as being not
 15 particularly well versed in that, but my belief is that
 16 it's \$3,000 a year. But we have it staged for size, and
 17 that's self-defined. So we ask someone are they large,
 18 medium, or small, and there's some gradation of the dues
 19 within that. But I think a media manufacturer, I believe,
 20 is \$3,000, but I wouldn't, you know, bet a dollar on me
 21 being accurate on that.

22 Q Okay. You are familiar with the Federal Statute
 23 18 U.S.C. 2257 which imposes age verification requirements
 24 on producers of films and photographs that include images
 25 of sexually explicit conduct; correct?

1 A Yes.

2 Q And you first became familiar with these
 3 requirements before the current version of the statute and
 4 regulations?

5 A Yes.

6 Q How did you become familiar with those
 7 requirements?

8 A I'm a criminal defense attorney, and a portion of
 9 my clientele is affected by those -- by that set of laws
 10 and regulations; so it's part of my job. Just like I
 11 could tell you what the punishment is for driving under
 12 the influence for California under a variety of different
 13 circumstances.

14 Q Was your first inkling of the existence of these
 15 requirements from communication from a client?

16 A I don't remember. I'm -- probably another
 17 lawyer. I was aware of -- my recollection -- we're
 18 talking about 1988; so it's 25 years ago -- is dimmed over
 19 time, but it was probably another lawyer. It might have
 20 been at the First Amendment Lawyers Association. That's a
 21 highly likely possibility, but I was aware of it post
 22 passage but before it took effect.

23 Q That was very early on after its enactment?

24 A Yes. I was aware of it before the first
 25 regulations came out. They haven't gotten any better.

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1 Q And you are aware of it before the Free Speech
 2 Coalition even existed?

3 A Yes.

4 Q Do you think the -- or do you know whether the
 5 existence of the Free Speech Coalition has anything to do
 6 with those requirements?

7 MS. BAUMGARDNER: Objection. Go ahead and answer
 8 if you understand.

9 THE WITNESS: I don't understand the question.

10 BY MS. WYER:

11 Q Do you think the enactment of those laws had
 12 anything to do with the formation of the Free Speech
 13 Coalition?

14 MS. BAUMGARDNER: You mean in particular?

15 MS. WYER: Yeah.

16 THE WITNESS: I don't know. I mean, I'm aware of
 17 what some people said was their motivation for forming yet
 18 another organization. As I said, there's been a series of
 19 them. But I also recall what was said when previous
 20 organizations were formed, and often the people who spoke
 21 were not representative of the people that ultimately
 22 animated the organization. I do not recall 2257 as being
 23 a specifically stated motivator, but insofar as the
 24 purpose of the formation of the organization was to
 25 address the trade's needs, 2257 was -- would certainly

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1 qualify as one of those.

2 BY MS. WYER:

3 Q When did Free Speech Coalition become aware that
4 any of its members were following the requirements of 2257
5 and implementing?

6 A Did you say when did the Free Speech Coalition
7 become aware? That is, the Free Speech Coalition in that
8 fashion because again I don't think of an organization
9 having awareness. Directors have awareness because
10 they're human beings, but I can answer it this way. It's
11 unimaginable to me that any member of the initial board of
12 directors was unaware of 2257 and its impact on the
13 industry. It was incorporated in '91.

14 Q When, in your understanding, did Free Speech
15 Coalition members begin implementing actions in order to
16 comply with the requirements?

17 A My guess is that the majority of members of the
18 Free Speech Coalition were attempting, with a greater or
19 lesser degree of energy and success, to comply with the
20 2257 at the time of the formation of the organization
21 because the organization existed in 1991 -- was formed in
22 1991, and people were making efforts at complying since
23 1988.

24 Now, the injunctions and the rulings against 2257
25 that went from '88 to the initial real enforceable date in

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1 qualify them as primary producers?

2 A There are members who arrange for the recordation
3 of sexually explicit and sexually simulated images. There
4 are members who record those images, and there are members
5 who put those images into the stream of commerce.

6 Q Could you put them in categories like magazines
7 and things like that, or is there a way to categorize
8 them?

9 A Sure. I could, but it doesn't make any
10 difference. If I'm a toy manufacturer and I have an image
11 on the packaging that is sexually explicit, I'm a primary
12 producer. If there's a magazine and it has those images,
13 then I'm a primary producer. If the image is a moving
14 image in a tangible object, like DVD, VHS, or 8mm, I'm a
15 primary producer. If it's created only and exists only
16 in, you know, electronic form transmitted, for instance,
17 through the Internet, then it's a primary producer.

18 Q Do you know how many Free Speech Coalition
19 members are primary producers?

20 A I don't have a specific number but the vast
21 majority are. The exceptions would be lawyers, and I mean
22 I'm assuming that none of the lawyer members are primary
23 producers. They're not mutually exclusive, but one would
24 not expect that. I don't know of any lawyers that are
25 primary producers. Talent agents probably are not primary

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1 July of '95 -- there was an enormous variation in how the
2 businesses that were directly affected by 2257, how they
3 responded to that. Some said wait to see if it ever goes
4 into effect. Others attempted to comply immediately, but
5 everyone was aware of it. I can't say everyone. Everyone
6 I interacted with was aware of it. Again, it was part of
7 my job to make sure they did.

8 Q Are you familiar with the term primary producer
9 as used in the 2257 scheme?

10 A Yes. I think as used. I don't think it has a
11 particularly meaningful distinction currently.

12 Q What do you mean?

13 A Well, Adam Walsh enactments attempted to
14 eliminate the distinction between primary and secondary.

15 Q But you're aware that implementing regulations
16 that have a definition of primary producer and a
17 definition --

18 A Yes.

19 Q -- of secondary producer? Is Free Speech
20 Coalition a primary producer?

21 A No.

22 Q Are Free Speech Coalition members primary
23 producers?

24 A Some.

25 Q What kinds of activities are they engaged in that

1 producers. In the category of nonperformer individual
2 members, I couldn't break down, but some of them are
3 primary producers because they are individuals who are not
4 otherwise -- who don't have a corporate existence but just
5 are an individual producer. Someone who takes pictures,
6 photographers -- they're primary producers, and they're
7 members. One would not anticipate if you're the sound
8 engineer or camera person or makeup artist that you're a
9 primary producer not in that role, and they are members.
10 The majority of performers are primary producers because
11 of their Web site participation and social media. The
12 majority of brick and mortar retailers are because they
13 have Web sites. The majority of distributors have Web
14 sites that makes them -- excuse me. Those are secondary
15 producers. So I would assume that most retailers and
16 distributors are secondary producers, not primary
17 producers. So those would be the group that are not
18 primary producer, but I think I said most performers are
19 insofar as they commission imagery of themselves that
20 appears on the Web site. They of course can be second
21 producers that simply take images recorded by others and
22 use on their Web sites.

23 Q So what percentage of Free Speech Coalition
24 members do you think are primary producers?

25 A The quality of my estimate is so poor as to

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1 qualify as a guess.

2 Q We've already mentioned the term secondary
3 producer, but you're familiar with that term as used in
4 the regulations?

5 A Yes.

6 Q And Free Speech Coalition is not a secondary
7 producer?

8 A That's correct.

9 Q And you've explained that, of the categories of
10 Free Speech Coalition members, the activities that would
11 qualify as secondary producers are conducted by retailers
12 and distributors?

13 A Well, most. The only categories that would not
14 be secondary producers -- because I think most
15 manufacturers are primary and secondary. So the only ones
16 that I could think of that would be secondary only would
17 be distributors who have Web sites, retail outlets who
18 have Web sites, and possibly a handful of artists, actors
19 and actresses who don't commission anything for themselves
20 and rely exclusively on materials created by others. I
21 don't know what fraction. I would assume a minority, but
22 some fraction of the performing artist community is
23 exclusively secondary producer.

24 Q Do you think there are any categories of primary
25 producers who are not also secondary producers?

1 in some fashion and puts it into the stream of commerce.

2 Q Did you say you would not think of them as
3 manufacturers?

4 A I would not think of that person that I just
5 described -- that person who is basically directing and
6 funding a scene and selling it to a third party to put
7 into the stream of commerce. I would not think of that
8 person as manufacturer. The distinction initially
9 manufacturer is someone who would take the image and put
10 it on discs or videotape it and push it out into the
11 world. That's what they were manufacturing.

12 Now, with the Internet that term is probably not
13 particularly descriptive or accurate. But let's say I am
14 a sort of stereotypical small producer that makes 20
15 scenes a year. Every other week I'll shoot a 6- to
16 15-minute scene. It is likely that, rather than
17 distributing that through a Web site because that wouldn't
18 generate substantial enough income to carry me through,
19 it's much more convenient for me to sell that scene to
20 someone else who has a large Web site that has the scenes
21 of many, many different creators in it and just get income
22 from them. In which case, that person would be a primary.
23 They would never be buying other people's product.

24 Q Does Free Speech Coalition members upload
25 material onto Web sites?

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1 A Yeah. The independent contractor who creates
2 movies to sell to others. They are not secondary.
3 They're exclusively primary.

4 Q Or could that also include manufacturers?

5 A Most manufacturers. I can't say all because I
6 don't know that, but my assumptions is that most, if not
7 all, acquire product that was created by a separate
8 primary producer. That would not qualify as a joint
9 primary production because it could be multiple primary
10 producers for one work of art. Recognizing that, my guess
11 is that the large majority of primary producers are
12 secondary producers as well. That is, they acquire
13 finished product and distribute it, put it into the --
14 distribute it, put it into the stream of commerce, and
15 therefore are secondaries.

16 Q So you think that even small producers who are
17 creating films are also secondary producers?

18 A It just all depends what you mean by "small."
19 That's why I used the term "manufacturer." When I think
20 of a producer is somebody who puts up the money to create,
21 for instance, a movie or a scene. If that's all they do,
22 essentially arrange for production, they would be unlikely
23 to be secondary producers, but I wouldn't think of them as
24 a manufacturer because, once they create that, they would
25 turn around and sell that to someone else who bundles it

1 A Yes.

2 Q Would such entities or individuals qualify as
3 primary producers or secondary producers or both?

4 A Could be either or both.

5 Q Depending on whether the material they're
6 uploading is material they've created?

7 A Yes.

8 Q Is there any type of activity, for example,
9 creating digital films or creating videos or creating
10 print images that is more common amongst Free Speech
11 Coalition members than others?

12 A I would think that Free Speech Coalition fairly
13 represents the market, and in the market more -- the
14 majority of images are created electronically for
15 electronic distribution than for tangible distribution.

16 Q Is the --

17 A Don't mind me.

18 Q Free Speech Coalition, for purposes of this case,
19 has identified a certain number of entities or individuals
20 as members; correct?

21 A I believe so.

22 Q Those include David Connors, Marie Levine, the
23 Sinclair Institute or Townsend Enterprises; correct?

24 A Yes.

25 Q And those are Vivid Video Pictures, Wicked

12 (Pages 45 to 48)

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1 say it was not the primary factor that it shut down?
 2 A There are -- I have been told by third parties --
 3 so not directly with the policy maker of companies that
 4 have shut down. And when it has been told to me why they
 5 shut down, the cost of compliance with 2257 and/or the
 6 fear of a criminal prosecution because of a record keeping
 7 error were significant factors, but I've not spoken to any
 8 of those people directly. People have said that such and
 9 such company went out of business and that has been said
 10 as being factors. But as I'm saying this, I'm trying to
 11 remember names, and I'm not sure that I can distinguish
 12 one from the other. So I'm loath to mention specific
 13 names.

14 Q Do you have a sense of how many producers you've
 15 heard of in that category?

16 A Probably a half dozen. That's the right
 17 magnitude. I have had a couple of people, maybe three,
 18 post Adam Walsh who consulted me with the intention of
 19 becoming a producer who told me, either at the end of the
 20 consultation or after, that ultimately they decided they
 21 just didn't want to do it, saying that 2257 was a specific
 22 factor. This is attorney-client privileged material; so I
 23 cannot disclose names. But I would say that two or
 24 three -- three is my best guess -- have post-Adam Walsh,
 25 chosen not to enter the business because of fear of

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1 criminal prosecution under 2257 or the burden.

2 Q Are you intending to testify regarding
 3 information that you got within the attorney-client
 4 relationship?

5 A I am not.

6 MS. BAUMGARDNER: Objection.

7 THE WITNESS: I am not intending to.

8 BY MS. WYER:

9 Q Okay. Just for the record, to the extent that
 10 you intend to testify to such information, we reserve the
 11 right to reserve to exclude it to the extent we have not
 12 been able to probe it further.

13 MS. BAUMGARDNER: And I'm objecting because
 14 you're inquiring about privileged areas, anyway. You're
 15 not entitled to a response.

16 BY MS. WYER:

17 Q In regard to Dave Connors, what is your basis for
 18 your understanding regarding his going out of business and
 19 the reasons for that?

20 A I believe he has said it -- I believe I've read
 21 it in a trade publication.

22 Q Do you recall where?

23 A No.

24 Q You have not spoken with him about it?

25 A I have an attorney-client relationship with Dave;

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1 so I cannot answer that question.

2 Q Do Free Speech Coalition use young-looking
 3 performers in the images of sexually explicit conduct that
 4 they produce? And by "sexually explicit conduct," I
 5 mean -- can we agree that I mean activities that would be
 6 subject to the 2257 requirements?

7 A You want -- I don't need a definition of that
 8 term. I need the definition of the term "young looking."
 9 I'm 56 years old. Most people are young looking.

10 Q What do you consider to be young looking?

11 A I -- I don't know what that term means. Younger
 12 than what?

13 Q Well, I guess we can just go to some examples.

14 A I'm going to need a reference. Younger than me?
 15 Younger than something. Right. Because "young" doesn't
 16 mean anything. I have a five-year-old son. He is young.
 17 I have not seen a commercial production of sexually
 18 explicit material that depicts anyone that could be
 19 mistaken for my son.

20 Q For a five-year-old?

21 A Correct.

22 Q In your opinion, what does the term "mature"
 23 mean?

24 MS. BAUMGARDNER: Objection.

25 THE WITNESS: Should I answer?

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1 MS. BAUMGARDNER: Yeah. Go ahead. In terms of
 2 what? If you understand what she's asking.

3 THE WITNESS: Mature means to me to have an
 4 appreciation of the complexity of the world that we
 5 participate in and understanding individual
 6 responsibility.

7 BY MS. WYER:

8 Q Is it your belief that the images produced by
 9 Free Speech Coalition members contain -- are exclusively
 10 of mature-looking individuals?

11 A Depending on what you mean by the term "mature,"
 12 yes or maybe no. But I don't know what you mean by the
 13 term "mature."

14 Q Do you have an understanding of the term "old"?

15 A Without a context, it doesn't mean anything.

16 Again, I mean at five years old, my son does not
 17 distinguish between an 11-year-old and 56-year-old. We're
 18 all old. What do you mean?

19 Q Do you think that you can determine a person's
 20 age by their visual appearance?

21 A No, I do not.

22 Q I just saw a picture of Rachel -- a video of
 23 Rachel Robinson, Jackie Robinson's widow.

24 MS. BAUMGARDNER: Oh.

25 THE WITNESS: She is 85.

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<p style="text-align: right;">Page 97</p> <p>1 Q What is the decision making process when Free 2 Speech Coalition is considering filing a lawsuit? 3 A Importance or perhaps you can say relevance to 4 the national impact of the -- whatever it is that we would 5 be challenging in the litigation, the cost of litigation, 6 and whether there are more suitable plaintiffs. 7 Q Aside from Free Speech Coalition? 8 A Correct. 9 Q Who makes the decision? 10 A Board of directors. 11 Q Does it -- is there a vote, or is it a consensus? 12 A Could be either. 13 Q So is that the process that was -- that occurred 14 in this case? 15 A Yes. 16 Q Was there a vote? 17 A Probably. I don't remember. 18 Q At what point would it be decided in terms of, 19 like, how far in advance before filing? 20 MS. BAUMGARDNER: Objection. 21 THE WITNESS: That depends. I mean -- 22 MS. BAUMGARDNER: Kathy, I don't mean to 23 interrupt, but I can use a bite to eat when it is a good 24 stopping point. I think Mr. Douglas probably could too, 25 if not the court reporter. I know you're an iron woman;</p>	<p style="text-align: right;">Page 99</p> <p>1 enforcement action against Free Speech Coalition members; 2 correct? 3 A Yes. 4 Q There was a cutoff date by which anyone who was a 5 member by that date would be covered by that agreement; 6 correct? 7 A Yes. 8 Q That cutoff date was 2:00 p.m. June 25th, 2005? 9 A I have no independent recollection, but that 10 sounds correct. 11 Q Do you recall how many new members Free Speech 12 Coalition -- joined Free Speech Coalition as of -- during 13 the time period between the agreement and the cutoff date? 14 A We were utterly completely unprepared and 15 overwhelmed. It was probably 2,000. That's the right 16 magnitude. It could have been 1,200. It could have been 17 2,000, but 2,000, as I said, is the correct magnitude. 18 Q That time period in which these members joined 19 was? 20 A Like, ten days. It was a disaster. 21 Q But today you mentioned that the current 22 membership of Free Speech Coalition is 950, did you say? 23 A I think I said 800, but again that's the right 24 magnitude. 25 Q So do you know -- do you have any sense of how</p>
<p style="text-align: right;">Page 98</p> <p>1 so -- 2 MS. WYER: Maybe in 15 minutes. 3 MS. BAUMGARDNER: That's fine. 4 MS. WYER: Maybe less. This section might not 5 take long. 6 BY MS. WYER: 7 Q You've been involved in prior litigation 8 involving 2257; correct? 9 A Yes. 10 Q What cases were you involved in? 11 A The Free Speech Coalition versus -- trying to 12 remember. 13 MS. BAUMGARDNER: Gonzales, I think. 14 THE WITNESS: I think it started with Ashcroft 15 and Gonzales came in afterwards. Maybe not. I don't 16 remember. In any case, it was a challenge to the -- when 17 the -- when the set of regulations in 2005 came out with 18 the revival of secondary producers, we filed a lawsuit in 19 Denver. 20 BY MS. WYER: 21 Q That was the -- so that was district of Colorado? 22 A Yes. At one point it was FCC vs. Gonzales. It 23 may have been the entire time. 24 Q During that case, there was a point where there 25 was an agreement that the government would not take</p>	<p style="text-align: right;">Page 100</p> <p>1 long those new members remained members? Obviously, not 2 all of them remained members. 3 A There were a number of problems. We did not have 4 any mechanism in place to receive the number of calls that 5 we were getting, and so we made a number of fatal errors 6 which resulted in the lack of renewals. We hired a phone 7 service to take the orders, and they might be quite fine 8 if you're going to be ordering pens or garbage cans from 9 them, but they failed to get almost all of the necessary 10 information. That is, they got names incorrectly. They 11 got phone numbers incorrectly. The only thing they got 12 were credit card numbers. That's the only thing they 13 cared about. So we had hundreds of companies that we had 14 listed as members whom we could not contact. And when we 15 sent out renewal notices, that's when we found out that we 16 didn't have addresses or we had partial addresses or we 17 had incorrect addresses. So there was a substantial 18 number that we simply had no means of contacting. 19 The other issue was that a number of companies no 20 longer felt that there was the urgency of joining because 21 they formed the opinion they were getting the benefit, 22 which is to say, lack of enforcement whether they were 23 members or not. 24 And then in addition, that occurred at a 25 relatively dynamic time in the evolution of the adult</p>

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1 were worthless to you.

2 Q What was the prior understanding based on?

3 A The five-year washout? It's in the regs, the old

4 regs.

5 Q That was amended in this proposed --

6 A In the proposed regs, they said that you could

7 sell to a secondary only if you provided them with the

8 records. But if you didn't need to maintain those

9 records, then those records would lawfully been disposed

10 of. So you're creating an obligation to maintain records

11 in order to make material commercially viable that the

12 government had previously said you didn't need to

13 maintain. That's a problem.

14 Q So there was an assumption, based on the

15 indication in the prior version of the rules, that records

16 need only be maintained for five years. It was an

17 assumption that meant that, if one was going to engage in

18 secondary protection of that same material, somehow that

19 material would be exempt from the requirements?

20 A There was no lawful provision for secondary

21 producers. Right. From the date of the Sundance

22 opinion -- apart from the fact that just on its face,

23 secondary producer was a creation entirely on some small

24 section of the attorney general's office. There was

25 nothing that suggested that anyone other than a producer,

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1 self-evident, there was a published unappealed opinion

2 saying so.

3 Then in 2005 it's ha, ha, ha. You cannot sell

4 your material to another seller without providing them the

5 records that, under the existing law, you could destroy.

6 Therein lies the problem.

7 BY MS. WYER:

8 Q Was Sundance a Supreme Court opinion?

9 A Tenth Circuit.

10 Q So the secondary producer requirements don't

11 apply in California; correct?

12 A No. They were unconstitutional at the time ab

13 initio. If tomorrow government were to say based on

14 legislation but on a regulation generated by executives

15 that it was illegal to be a passenger in a car with .08

16 that would be void ab initio. There is nothing about that

17 that's enforceable. There's nothing about that is

18 law. That is dictatorship. That is an arbitrary rule

19 announced inconsistent with due process. That's what

20 Sundance said. That's what was the -- as a result of

21 Ashcroft vs. Free Speech Coalition, and the government did

22 nothing during that period to suggest or imply that that

23 was not correct.

24 There is, as we found out in Denver, a cost to

25 not aggressively consistently challenge unconstitutional

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1 a person who arranged for or did the recording of the

2 material or paid for the performers was a record keeper.

3 That was it. That was the entire universe of record

4 keeper. The attorney general said oh, it's not just --

5 it's not just the driver of the car who's drunk. If any

6 of the passengers are in the car, that's a crime too.

7 That's not what the statute on drunk driving says. That

8 is precisely analogous to what happened here. So ultra

9 vires regulations were created that everybody, except a

10 handful of people in the justice department, recognized

11 that could not be lawful and effective.

12 Then Sundance comes out and says, yeah, you're

13 right. This is ultra vires. This is indefensible. The

14 government did not appeal, and there was no attempt to do

15 anything to communicate that this was not the position of

16 the Justice Department until the 2007 regs -- 2005 regs

17 come out. So from the date of Sundance -- which I don't

18 recall what it is, and it may be in here somewhere.

19 MS. BAUMGARDNER: I think it's '98. I'm not

20 sure.

21 THE WITNESS: So from 1998 to 2005, there were no

22 secondary producers. That was entirely an artificial

23 creation of the attorney general and no one on earth was

24 complying with it, nor was there any rational reason to

25 comply with it because, besides the fact that it was

1 regulation because government said you sat on your hands

2 all this time. There's a flip side to that too when the

3 government is told by a Court of Appeal that they had done

4 something that is patently indefensibly beyond its

5 authority, and the government does nothing inconsistent

6 with that for seven years and then says ha, ha, ha. All

7 you guys you have to do what we did nothing to convey that

8 you had to do after a Court of Appeal said -- stated the

9 obvious. Yeah. That's a huge problem.

10 Q Okay. I think I understand that position.

11 Going on to No. 2 in the --

12 A Yes.

13 MS. BAUMGARDNER: Exhibit 7?

14 BY MS. WYER:

15 Q 2 in Exhibit 7 on page 4.

16 A 4. Yeah.

17 Q The definition of producer --

18 A Is unwarranted by the statute and burdens too

19 many people.

20 Q Was this comment adopted?

21 A Not going to jump the gun this time. I'm going

22 to look at it. Do you know -- is there a place in the

23 final regs that you believe this is referenced?

24 Q On page 777439.

25 A 439?

35 (Pages 137 to 140)

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1 that you would attribute to 2257?

2 A That's exactly correct. The acquisition of a
 3 reliable form of identification government issued ID not
 4 necessarily precisely those prescribed by 2257. For
 5 instance, if a performer provided me -- if I was a
 6 producer -- with a passport from Canada, I would find that
 7 to be perfectly reliable and be comfortable establishing
 8 that identity and age, but in any case government issued
 9 ID is proof that the person is of the age of majority.
 10 That is not a burden. It's everything else. And since
 11 everything else, as I indicated and overenunciated, is
 12 unnecessary in order to achieve the goals of legislation,
 13 that's why it's such an enormous burden. Recognize that,
 14 if a production company puts into the stream of commerce
 15 material that has a minor in it, if they are in compliance
 16 with 2257 and their good faith is established therefore
 17 they don't have to worry about doing 15 years mandatory
 18 minimum for producing child pornography. The cost of
 19 having a minor get into the system, having to recall that
 20 material is overwhelming and generally catastrophic.

21 Q Can you identify other requirements that apply to
 22 Free Speech Coalition, other legal requirements under
 23 which they operate --

24 A Sure.

25 Q -- that relate to age verification?

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1 A Then -- sorry. That fooled me. Repeat the
 2 question.

3 Q Can you identify any other legal requirements
 4 under which Free Speech Coalition members operate that
 5 relate to age verification?

6 A Yes. I cannot imagine any member of the Free
 7 Speech Coalition who distributes an image of a performer
 8 not intending to have a model release on file. And since
 9 a model release is a contract and a contract with a minor
 10 is not enforceable, the producer has a civil legal
 11 obligation to be a functioning profitable business to
 12 verify that the person with whom they are contracting is
 13 of age.

14 Q And the result if a producer did not do that
 15 would be that the rights that they would have required
 16 through the release would not be valid; correct?

17 A Right. They would have dual obligations to
 18 recall and destroy the product one criminal one civil.

19 Q What would the criminal obligation be?

20 A Violation of child pornography laws. If I sign a
 21 contract with a minor and distribute images of that minor
 22 and it turns out that person is a minor unbeknownst to me,
 23 once I find out, I have the affirmative obligation to stop
 24 distributing the material, and to the extent that I
 25 previously distributed material, see to its lawful

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1 destruction.

2 Q So you have identified child pornography criminal
 3 laws and the requirement that contracts must be signed by
 4 individuals who are either of legal age or have been
 5 otherwise adjudged competent to enter into contracts as --

6 A Correct.

7 Q -- to age-related contracts --

8 A Correct.

9 Q -- applicable to members? Are there any others?

10 A No. Nothing I can think of. Well, let's see. I
 11 think -- I'm not familiar with state laws on hiring a
 12 minor; so I don't know if I were to hire a 16-year-old or
 13 17-year-old for the purpose of, you know, filing documents
 14 in my office if I have some special obligation once they
 15 are a minor. I don't know that. It may well be there are
 16 others. I'm not familiar with that. The ones I'm aware
 17 of are criminal and civil side. So if one fantasized a
 18 world where there are no child pornography laws, but I
 19 have inadvertently hired a minor and distributed the
 20 material in order to minimize my civil liability once the
 21 minor sues me or once I'm notified and recognize I might
 22 be sued, I would have a similar obligation to, A, stop
 23 distributing the material and recall the material as
 24 quickly as possible in order to minimize my civil
 25 liability. Has an extremely costly effort, costly not

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1 only in terms of my out-of-pocket loss and expense for
 2 doing that but also the loss of good will is profound.

3 Q And the impact that would have would be a
 4 professional and financial impact to the producer?

5 A Yes.

6 Q In looking at Interrogatory 9, I wanted to note
 7 in the response that this is a question that asked for the
 8 number of individuals appearing in the Free Speech
 9 Coalition members who are in particular age ranges. And
 10 the -- in the response it stated in all likelihood there
 11 are more than 1000 depictions for each category except
 12 perhaps for 6, which is the category of over 65.

13 A Right. Since Dave Connors may have well been
 14 close in a thousand by himself over the age of 65.
 15 Certainly he has done hundreds. May be that that 65 --
 16 over 65 does meet the thousand.

17 Q That's based on an understanding of -- if the
 18 question had asked instead for numbers of individual
 19 performers?

20 A There are likely scores if not hundreds of
 21 performers over the age of 65 who have engaged in sexually
 22 explicit conduct. I don't know if they are all members.

23 MS. BAUMGARDNER: I want to clarify. The
 24 interrogatory asked for total number of depictions.

25 MS. WYER: I was saying if performers.

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1 THE WITNESS: That is, there is -- there are all
 2 of the sort of subcategories that are created for
 3 marketing purposes so there is a subcategory of granny
 4 porn. There is surely scores of people that perform under
 5 granny porn, and there are likely hundreds. And if you
 6 were to tell me there are thousands, that is not an
 7 unlikely number. Now what percentage of those productions
 8 are created or distributed by our members? I don't know.
 9 But you're talking about a measurable and significant
 10 portion of the fraction of the material that is available
 11 both tangible and online.

12 BY MS. WYER:

13 Q But even under the interrogatories where -- your
 14 answer suggests that the number of individuals in the
 15 other -- the number of depictions in the other age ranges
 16 would be more?

17 MS. BAUMGARDNER: Objection. More than what?

18 BY MS. WYER:

19 Q More than the number in the Category 6?

20 A We specifically say -- without waiving the
 21 objection -- there are substantially -- there are more
 22 than 1,000 depictions for each category.

23 Q Except perhaps for six.

24 A Right. I'm not sure that exception is correct,
 25 but we were extraordinarily cautious.

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1 Q Does that answer reflect your understanding that
 2 there are likely more in the other age ranges than in the
 3 over 65 age range?

4 A Yes. It reflects -- you said understanding.
 5 That's a strong guess -- estimate.

6 Q Do you have any way of knowing the ages of
 7 performers that appear in depictions produced by Free
 8 Speech Coalition members?

9 A Not specifically, no. Well, yeah. They're all
 10 over 18, 100 percent.

11 Q Do you -- does Free Speech Coalition engage in
 12 any monitoring of its members' production activities in
 13 order to evaluate whether they are in fact using only
 14 performers 18 or over?

15 A No.

16 Q Is there any contract between Free Speech
 17 Coalition and its members that requires that?

18 A No. There is a best practices. That's the
 19 closest thing that comes to that, and I don't know off the
 20 top of my head if best practices include specifically of
 21 age, but it says comply with applicable laws. And I don't
 22 believe that you could find a single knowledgeable person
 23 who would disagree with the statement that there is no
 24 knowing production of sexually explicit material with
 25 someone under age by, A, members of the Free Speech

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1 Coalition or, B, the substantially larger class of
 2 commercial producers or distributors of adult pornography.
 3 Even the most committed critics of the industry do not
 4 suggest that commercial child pornography has a
 5 relationship, a commercial relationship with the adult
 6 entertainment industry. No one believes that.

7 Q Is that your understanding yourself?

8 A I'm sorry? Is it my understanding? There's no
 9 commercial relationship between the production of child
 10 pornography and production of adult entertainment. Yes.

11 Q Going to Interrogatory 12, this lists various Web
 12 sites. Were you involved in compiling this list of Web
 13 sites?

14 A I don't think so. I may. I'm not sure whether I
 15 mentioned any of these or not. I'm familiar with a
 16 fraction of these, and I don't remember whether I proposed
 17 them or not. Let's assume no.

18 Q That was my only question on that. Have you --
 19 are you aware of any -- are you aware that in response to
 20 these interrogatories there was also -- this was -- let's
 21 give you 10.

22 MS. WYER: Let this be marked as Exhibit 10.
 23 This is the second set of interrogatories responses.

24 (Defendant's Exhibit 10 was marked for
 25 identification and is annexed hereto.)

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1 THE WITNESS: Yes.

2 BY MS. WYER:

3 Q From Free Speech Coalition; correct?

4 A Yes.

5 Q And in response to Interrogatory 23 there are
 6 various categories on subsections of that, and I want you
 7 to look at subsections H and I on page 10 which asks for
 8 examples of sexually explicit visual depictions in a
 9 documentary on rape and sexually explicit visual
 10 depictions in a documentary on sexual abuse in war-torn
 11 countries.

12 A That's on page 10?

13 MS. BAUMGARDNER: Mine is misstapled. Let's see
 14 if yours may have too. Yours is correct.

15 THE WITNESS: And your question is?

16 BY MS. WYER:

17 Q Whether you are familiar with any of the examples
 18 provided on page 12 in response to subsection H and I?

19 A I have not seen but I am aware of abused
 20 innocents. I heard it discussed on an MPR program. And
 21 likewise I'm pretty sure that what I was familiar with is
 22 inside the anonymous hacking file of the Steubenville rape
 23 crew.

24 Q Are you aware whether those depictions -- whether
 25 those works include images that would be -- that in your

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1 the Court about that.

2 THE REPORTER: Would you like copy?

3 MS. BAUMGARDNER: I'll let you know.

4 (Deposition concluded at 4:21 p.m.)

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1 REPORTER'S CERTIFICATE

2 I, ELIDA REYES, Certified Shorthand Reporter in
3 and for the State of California, License No. 13547, hereby
4 certify that the deponent was by me first duly sworn and
5 the foregoing testimony was reported by me and was
6 thereafter transcribed with computed-aided transcription;
7 that the foregoing is a full, complete, and true record of
8 said proceedings.9 I further certify that I am not of counsel or
10 attorney for either or any of the parties in the foregoing
11 proceedings and caption named or in any way interested in
12 the outcome of the cause in said caption.13 The dismantling, unsealing, or unbinding of the
14 original transcript will render the reporter's certificate
15 null and void.16 In witness whereof, I have hereunto set my hand
17 this day: _____, 2013.

19 [] Reading and Signing was requested.

20 [] Reading and Signing was waived.

21 [X] Reading and Signing was not requested.

24 Elida Reyes, CSR No. 13547

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1 I declare under penalty of perjury under the laws of
2 the State of California that the foregoing is true and
3 correct.

4 Executed on _____, 2013, at

5 _____, _____.

6 (city) (state)

10 JEFFREY J. DOUGLAS

1 INDEX

2 Tuesday, April 9, 2013

3 WITNESS

4 EXAMINATION

5 JEFFREY J. DOUGLAS

6 (By KATHRYN L. WYER)

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In The Matter Of:

Free Speech

v.

The Honorable Eric H. Holder, Jr.

Thomas Hymes VOL I

April 8, 2013



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Word Index Included with this Condensed Transcript.

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1 BY MS. WYER:

2 Q And when you answer, please answer verbally
3 so that the court reporter can record your response,
4 because she can't understand nods.

5 A Okay.

6 Q What did you do to prepare for the deposition
7 today? Anything?8 A We met yesterday for a few hours, and that's
9 about it. I haven't really done much other
10 preparation for it. I looked over my -- I had a copy
11 of my first -- the answer to my first interrogatories.
12 I went over that briefly, and that's about it.13 Q Is that the only document that you looked
14 at?

15 A That is the only document that I looked at.

16 Q Okay.

17 A I looked at a couple -- I also looked at a
18 couple of old news stories on avn.com just to refresh
19 my memory, and that's it.

20 Q About the litigation?

21 A Well, about -- in fact, the meeting I had
22 talked to you about when we went to the -- I've
23 forgotten when it was. So I wanted to refresh my
24 memory. We went to the meeting with the FBI in
25 Washington DC in 2007. Mark Kerns had written an1 began in 1999. And I've been covering the industry
2 ever since.3 Q So when you first got the job as a staff
4 writer, that was 1999?5 A That was -- it was -- I believe it was still
6 in 1999, yes.

7 Q So were you --

8 A I was hired part time to just review movies
9 and then they hired me full time at AVN to be a staff
10 writer for this new magazine, AVN Online, and that was
11 all -- that all began in 1999.12 Q Okay. It all happened within the year that
13 you --14 A Well, I didn't become editor in chief right
15 away. That was about three years later, but I was a
16 staff writer for a couple of years.

17 Q Okay. And was that here in California?

18 A Yes, in Chatsworth.

19 Q Okay.

20 A Yes.

21 Q So when did you come to California?

22 A I'm from New York. I moved out here in 1979
23 actually, so I've been out here since 1979.

24 Q Okay.

25 A Uh-huh.

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Page 8

1 article about it, and I reread that last night to just
2 refresh my memory.3 Q Let's just start with your background. What
4 kind of education background do you have?5 A I have two years of college, and I'm also an
6 actor. My wife is an actor. So I've studied a lot of
7 acting-type classes in New York when I was younger.
8 But two years of college in Boston plus some other
9 matriculated -- various matriculated courses over the
10 years. So that's the extent of my higher education.
11 Then I graduated obviously high school in New York
12 City.

13 Q Did you have a major?

14 A It was English, yeah. Creative writing, that
15 type of stuff.16 Q Okay. How did you become involved in the
17 adult industry?18 A Well, I was introduced to it by an actor
19 friend who was in my theater company. She was writing
20 for AVN at the time. She asked me if I wanted to get
21 some writing work, which I did. I began part time
22 just reviewing movies, which I didn't particularly
23 like, and then they started this magazine called AVN
24 Online and they hired me as a staff writer. And I
25 eventually became the editor and chief, and that all1 Q And what were you doing between 1979 -- what
2 were you doing between 1979 and when you started with
3 AVN?4 A Working, living, a lot of theater, a lot of
5 acting type of work, improv group, that type of
6 stuff.

7 Q Did you come to California to be --

8 A Not really.

9 MS. BAUMGARDNER: Let her finish.

10 THE DEPONENT: I thought she finished. To be
11 an actor? Not really. I'd always done acting. I
12 kind of came out here; my brother was living here; so
13 I just stayed here and then just continued doing the
14 things that I had always been doing. But I didn't
15 specifically move out here to be an actor like
16 everyone else does.

17 BY MS. WYER:

18 Q When you started with AVN Magazine, was that
19 an online magazine?20 A No. AVN Online was a print magazine, so they
21 began a print magazine back then. It's no longer
22 being published, but it was -- it was AVN Online.
23 They started a magazine to cover the online industry
24 separate from AVN Magazine, which covered the video
25 side of the industry. So there was a magazine

2 (Pages 5 to 8)

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1 dedicated to covering the adult online industry, and
2 that's the one I wrote for.

3 Q Okay. And so for three years you were a
4 staff writer?

5 A Well, I don't remember exactly when I became
6 editor and chief. It was about two or three years
7 that I was a staff writer. Then I became the editor
8 and chief for another three years or so, and then I
9 left AVN in 2004.

10 Q What kind of stuff do you do when you're
11 editor and chief?

12 A Everything. You're responsible -- I was
13 responsible for assigning all the articles. I had a
14 staff and overseeing the production of the magazine,
15 the content of the magazine, the budget of the
16 magazine, so from A to Z. I was in control of that
17 magazine.

18 Q The advertising?

19 A There was obviously a sales department, so
20 sales would do -- you know, sell the advertising. I
21 would work with them, but I was editorial.

22 Q Okay. And during this whole period from 1999
23 to 2004, AVN Online was a print --

24 A Yes.

25 Q -- magazine?

Page 10

Page 12

1 A Yes, a print publication.

2 Q So you were working exclusively with --

3 A No. Because we also had avnonline.com, so I
4 was also charged -- I also had, at that time, one
5 staff member who was dedicated to posting stories on
6 avn.com. So there was an online component to it as
7 well, and, of course, I oversaw that as well.

8 Q And in 2004 what did you do?

9 A I left AVN. I resigned from AVN, and shortly
10 thereafter I was hired to be the communications
11 director for the Free Speech Coalition.

12 Q Why did you leave AVN?

13 A Because -- well, it's kind of -- not
14 personal. It was business stuff. I was a little
15 upset about -- it had to do with internal politics
16 frankly. And so there was a sort of direction -- they
17 hired a new publisher and he was taking the magazine
18 in a direction that I was not very comfortable with.
19 So I left for that reason. I mean it took me a year
20 to leave because I wanted to be in good graces with
21 everyone there and with the owners, who I'm very fond
22 of, but that's why I left. I left because it was
23 being taken in a direction that I was uncomfortable
24 with, so I resigned.

25 And I didn't really know what I was going to

1 do after that. And then Michelle Freridge, who was
2 the executive director of Free Speech Coalition at the
3 time, called me and offered me this other position,
4 which I took.

5 Q What do you mean when you say AVN was going
6 in a direction you weren't comfortable with?

7 A Well, I'm a -- I have strong journalistic
8 ethics and I don't like to -- I mean there was -- you
9 know, it's a trade magazine so it's -- you have to
10 fight all the time to hold the line on your editorial
11 integrity, and not everyone necessarily shares those.

12 They just hired a publisher who had kind of a
13 different philosophy and was sort of intruding into
14 editorial areas, and I wasn't really comfortable with
15 that and I couldn't stop it, and I was concerned about
16 the trajectory of where they wanted to take that
17 magazine and I didn't really want to be a part of
18 that. It was just too -- it wasn't pure enough for
19 me, and I thought it was really important that we
20 maintain our editorial integrity there and that was my
21 concern. So I take those things really seriously.

22 Q Let's back up. So what is AVN? What does it
23 mean to be a trade magazine?

24 A A trade magazine covers a particular
25 industry. So AVN magazine is, you know, a -- it

1 covers -- that's what a trade publication is. It
2 covers an industry.

3 And so for AVN, it covers the adult
4 entertainment industry, which is vast. So depending
5 on its resources, it will have different publications
6 that target different sectors of that industry.

7 At one time we had AVN Video, AVN Magazine,
8 AVN Online, online, and then there was an AVN Novelty
9 separate publication which covered the novelty sector.
10 Those have since, because of, you know, the market and
11 because of tough times, been combined into one
12 magazine now. There is no longer a separate novelty
13 magazine or an online magazine. They've all gone back
14 into AVN Magazine.

15 So depending on your resources, you have
16 either different ones or one, but they all cover --
17 they all cover a particular industry. They're not
18 consumer magazines. In other words, the readership
19 are members of the industry and people who are
20 interested in the industry as opposed to consumers, so
21 these are not consumer publications. They're trade
22 publications.

23 Q So what did you do for Free Speech
24 Coalition?

25 A I wrote all of the press releases. I

3 (Pages 9 to 12)

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1 communicated with all the media. I arranged
 2 interviews and anything related to a communications
 3 director type of position. Basically it was -- I
 4 would do -- also I did -- at that time Michelle was
 5 not so comfortable doing media interviews so I did all
 6 of them. Now Diane is very comfortable in that role
 7 so she tends to do them. They don't have a de facto
 8 communications director right now.

9 Q When you say "Diane," do you mean --

10 A Diane Duke. Diane Duke, current executive
 11 director. But at that time, I would do all of the
 12 interviews. I did hundreds of the mainstream
 13 interviews about all of these same issues, .xxx, 2257,
 14 whatever issues were coming up, whatever the media
 15 needed to talk about. And then also I also wrote
 16 articles and press releases and that type of stuff.

17 Q When you wrote articles, were they articles
 18 as a journalist or how does that work in being --

19 A No. They would be more in -- they wouldn't
 20 be a journalist because I wasn't a journalist at that
 21 time. They would be more advocate oriented. They
 22 would be advocating or communicating the positions of
 23 the Free Speech Coalition as I was -- at whatever they
 24 were. I was not -- there was a board of directors.
 25 There was an executive director. So I was

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1 communicating whatever the positions of the Free
 2 Speech Coalition were through the oral and verbally
 3 and written word to whomever the audience was. Mostly
 4 if it was written it would be to the industry, writing
 5 something for AVN or for XBIZ or for YNOT, Y-N-O-T.

6 Q So AVN publishes articles that it gets from
 7 Free Speech Coalition?

8 A Yeah. I mean occasionally that will happen.
 9 Diane will also write columns. She'll write -- I
 10 think she writes a regular column for XBIZ. So, you
 11 know, they're not published as journalism pieces.
 12 They're published as -- those particular things would
 13 be published as, you know, an advocacy piece or an
 14 opinion piece or whatever it would be from the Free
 15 Speech Coalition.

16 Q And how long were you in that position?

17 A Just about a year and a half actually. Only
 18 about a year and a half.

19 Q And why was that?

20 A I left because money -- there were financial
 21 issues at Free Speech Coalition. And the reason for
 22 that is actually beyond -- I don't -- I can't speak to
 23 that since I was not in charge of any finances. But
 24 there were some financial issues. I was unsure at
 25 that point in time that I was going to continue to get

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1 paid, and I had a young son, a family to support, a
 2 little baby at home, so I was -- I was between a rock
 3 and a hard place at that time.

4 I loved my job and I was not finished with my
 5 job. But I found myself in a position where I wasn't
 6 sure that I was going to be able to -- that they were
 7 going to have the money to pay me at that point in
 8 time. It's very specific to that point in time.

9 And the owner of XBIZ approached me at a
 10 trade show just by coincidence and offered me the job
 11 of publisher of XBIZ at that same period. And I
 12 thought long and hard and I took the position. So I
 13 went from -- right from Free Speech Coalition to
 14 XBIZ.

15 Q And what year was that? Do you know?

16 A That was -- oh, boy. It was probably 2006.
 17 The exact day -- I didn't look that up. I was just
 18 looking around for dates or something. But it was --
 19 actually the end of 2006, yes. Actually I can tell
 20 you for a fact. It was 2006 when I went to XBIZ. I
 21 don't remember the month.

22 Q And what is XBIZ?

23 A XBIZ is a competitor to AVN, so it's another
 24 media company that does basically the same thing,
 25 magazines, online, trade shows type of stuff.

Page 16

Page 16

1 Q Trade shows?

2 A Uh-huh.

3 Q What is that?

4 A A trade show? A trade show is a live event
 5 that is produced by, in this case, these same media
 6 entities where industry professionals come to network
 7 and, you know, and do business and see -- go to
 8 seminars and that type of stuff. So both AVN and XBIZ
 9 produce shows now.

10 Q Is it a place where things are sold?

11 A At the AVN I believe there -- huh. You know,
 12 that's a very good question. I believe there are some
 13 sales at trade show booths. My role for the trade
 14 shows is to coordinate all of the seminars. I
 15 currently do that for AVN and I did it for XBIZ back
 16 then. So I don't really involve myself with the show
 17 floor stuff. I do believe some sales are done there.

18 I think people actually do business there,
 19 because there's consumer elements as well to the AVN
 20 show. I don't believe the -- like there's fan days at
 21 AVN. It's like the January shows. They're huge the
 22 whole week in Las Vegas, so there's trade only days
 23 and then there's fan days when the fans come in to see
 24 their stars, and there might be some like sales
 25 components, like some people might sell their DVDs on

4 (Pages 13 to 16)

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1 the show floor or something like that.

2 Q So you're a publisher?

3 A At XBIZ.

4 Q And what did that involve?

5 A Truth be told, it was a title that didn't
6 have -- it was -- I was a publisher in name only. In
7 fact, I went to the owner of XBIZ after about a couple
8 of months and I said, You know, I'm not a real
9 publisher. A publisher has a budget. They have
10 information. They have data. They have all the
11 things that they need to do a publisher -- to be a
12 publisher. I had none of that.

13 So, in fact, I was hired, as happened before,
14 so he could hire me because I was a well-known entity
15 and he could hire me as the publisher without giving
16 me the tools I needed, which was why I didn't stay at
17 AVN. I was there only for about maybe a year and a
18 half.

19 MS. BAUMGARDNER: You meant XBIZ.

20 THE DEPONENT: XBIZ. I'm so sorry. I was
21 there only for about a year and a half and then left
22 there as well. But I was -- a publisher normally
23 oversees -- hires people, oversees editorial, does
24 business development, has sort of overall control over
25 the editorial side of the business, which would also

1 online XBIZ magazine and a video magazine and so I was
2 working -- it was almost the same type of thing. In
3 fact, he took his model, you know, from AVN. XBIZ as
4 a media company was begun to compete with AVN
5 specifically. So he sort of modeled it and had all
6 the same types of products and things that he was
7 doing, yeah.

8 Q Are AVN and XBIZ the only two like --

9 A Well, no, YNOT is -- there's ynot.com, and
10 YNOT actually predates in terms of articles and -- and
11 its being in existence predates XBIZ, and not AVN of
12 course as an entity. And both XBIZ and AVN began as
13 "webmaster resource sites." So they began as sites
14 that were to provide resource information and that --
15 and -- information and access and all sorts of things
16 for adult webmasters.

17 XBIZ blew up and decided to develop itself
18 into a media entity. And YNOT also went down that
19 road a little bit. YNOT hasn't had the resources or
20 the structure or, you know, the people behind it, so
21 it's never done any print magazines. It flurried with
22 trade shows but it doesn't do them anymore.

23 So the two top media entities in adult are
24 XBIZ and YNOT -- I mean XBIZ and AVN and then YNOT is
25 like way down. And then there's just individual

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1 include sales, you know, because the publisher would
2 be responsible for that side of the business. And so
3 ideally that's what I would have been doing.

4 In this particular circumstance, it didn't
5 quite work out that way, but that's what a publisher
6 normally does. I was a publisher in name only and so
7 I was just sort of overseeing editorial and then I did
8 all the seminars. It was during that time period that
9 XBIZ was expanding its trade shows.

10 And when I was there, they did their first
11 February show. Now they do them annually in January
12 to compete with AVN straight up at the beginning of
13 the year. The first one they ever did -- they had
14 only done one trade show when I arrived there. Since
15 then, then they did two a year. We did our first
16 February one. And the very first show I did was huge
17 for them. And that's when I actually invited the FBI
18 to come to the XBIZ show in February of 2007 where
19 Chuck Joyner addressed the industry and spoke about --
20 specifically about 2257 inspections. So those were
21 the types of things I was doing.

22 BY MS. WYER:

23 Q When you were in XBIZ, were you working again
24 with print media?

25 A Yes, there was a print magazine. They had an

1 bloggers and -- but there's no other really trade
2 media entities I don't think other than those two, the
3 two biggies.

4 Q What is the relationship between AVN and XBIZ
5 and the adult industry?

6 A What is the --

7 Q The relationship between AVN and XBIZ on the
8 one hand as --

9 A What is their relationship?

10 Q No, not between them, but between these trade
11 magazine, whatever they are, and the adult industry.

12 A It is a business relationship in that people
13 advertise with them. We promote -- these companies
14 promote the products of the industry, whether they
15 are -- any type of product, the movies, the
16 performers, products, promotions, however they're
17 promoting themselves. We do news.

18 And so it's these -- you know, like with, you
19 know, any trade entry for anyone, The Hollywood
20 Reporter or Variety, which is not what it used to be.
21 Those entities promote, support, and have reciprocal
22 business relationships with companies in the industry.
23 And so there's a lot of business that goes on in
24 between them. And then we also have our journalistic
25 role, which is supposed to be obviously separate from

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1 And then I was unemployed just doing
 2 freelance for a little while. Actually it was
 3 probably in 2008 and 2009, only for about say nine
 4 months or so. I was picking up regular freelance work
 5 from both AVN and XBIZ, because for years I've been
 6 writing major feature articles for both these
 7 publications. That's mainly what I am. I'm a writer.

8 And so -- but because I can handle staffs and
 9 I'm good with responsibility, I always got hired, and
 10 I loved running the magazine and being the editor and
 11 chief and being the boss, but I wasn't writing as
 12 much.

13 So once I was weaning off of XBIZ, I went
 14 into a freelance mode and was writing feature articles
 15 for both AVN and XBIZ and negotiating payments for
 16 that and just trying to keep my head above water as
 17 the economy -- the larger economy and my little
 18 personal economy was destroyed.

19 And then in the nick of time towards the
 20 latter part of 2009 I went to meet Darren Roberts, who
 21 was my previous employer, one of the owners at AVN,
 22 and they hired me back as a staff writer. I mean I
 23 went all the way up and then all the way back down.
 24 And things were so bad that I was hired back. There
 25 was another guy covering the online industry. They

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1 promptly let him go and so I'm like the only person.

2 So we went from full staffs at AVN, you know,
 3 these full-service companies. I had my own staff,
 4 four or five people, which we covered the entire
 5 online industry, to being the only person covering the
 6 online side of the industry for AVN. And I have been
 7 in that role since I returned to AVN as a senior
 8 editor at the end of 2009.

9 And so I'm still employed there. And I have
 10 been working as a -- just furiously as a writer since
 11 then just covering -- writing stories, stories,
 12 stories, stories, hundreds of them, mostly for the
 13 website because they don't have a magazine now and
 14 there's a new editor and chief for AVN Magazine. So
 15 we have an editor and chief and there's all those
 16 people. So that's what I'm doing now, plus I'm still
 17 coordinating the seminars for the trade shows.

18 AVN has new owners now also, and so there's a
 19 whole new ethic and feeling to AVN, and all of that is
 20 being worked out. So I was in -- when I returned,
 21 Darren Roberts and Paul Fishbein still owned AVN. And
 22 in that process I've been there -- they no longer own
 23 it. They found -- this whole -- this whole tortuous
 24 process where the owners who had owned it for 30 years
 25 and then it segued into new ownership and management.

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1 And all of that has happened between when I returned
 2 in 2009 to now. And that's kind of my story.

3 Q Are you still the only writer?
 4 A I am still the only writer whose beat is
 5 specifically online. There are other staff writers
 6 who cover the video side of the industry and the
 7 novelty side of the industry. And some of those
 8 writers are well-versed and can cover online stories,
 9 but that's my beat. And there's only one writer whose
 10 beat is online and that's me. So my title is -- they
 11 had it senior editor digital, which is awkward and
 12 kind of not really correct, but it kind of gives you
 13 an indication of what my focus is. Like for online
 14 stuff they always come to me.

15 Q Going back, just because I forgot to cover
 16 this, when you were editor and chief at XBIZ --

17 A No. I wasn't the editor and chief of XBIZ.
 18 I was the publisher there. When I was at XBIZ, our
 19 editors -- both of the editors of the two magazines
 20 quit. So at a certain point in time still in 2006, I
 21 was the publisher, plus I was running the two
 22 magazines, plus I was coordinating all the seminars.
 23 My plate was rather full, but I was never the editor
 24 and chief. I was the publisher and then he gave me a
 25 new title, executive editor, and then I left.

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1 Q Okay. But I thought you said that you --
 2 A Editor and chief at AVN.

3 Q Right. I thought you had said that your work
 4 at XBIZ was -- had tapered off and that's --

5 A Yes. It was tapering off, yes. It was
 6 tapering -- yeah, my -- my -- I -- at a certain point
 7 he goes, I don't need a publisher anymore. He goes,
 8 So we're going to give you a new title. And he goes,
 9 I made a mistake. I didn't need you to do whatever --
 10 whatever all that stuff was. It was just ridiculous.
 11 So I said, Well, okay. So he goes -- I go, What do
 12 you want the title? He goes, Well, I thought
 13 executive editor would be good. I'm like, Fine,
 14 whatever. Because titles are meaningless in this
 15 industry. At one point I made up my own title. It's
 16 the work that you do.

17 And these guys, they make up titles and they
 18 go, oh, he's my -- I mean, you know, I don't like it,
 19 because I don't believe in this type of stuff that
 20 they do. They give you a title but they won't give
 21 you the tools to do your job. And that happened to
 22 me, whatever. I'm over it and I'm past it, but those
 23 types of things happen. So he gave me a new title,
 24 which was executive editor.

25 And, you know, over at AVN they were freaking

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1 the right way. You know, it was -- it has not gone
 2 away since then. Not for -- not for any of us and
 3 certainly not for Free Speech Coalition whose role is
 4 not just to litigate but also to help members of the
 5 industry to survive certain laws if possible.

6 Q Were you involved in that aspect while you
 7 were at Free Speech Coalition?

8 A Just peripherally. If the Free Speech
 9 Coalition was going to put out recommendations for --
 10 or a press release about, say we lost the case but
 11 it's still -- you know, it is still incumbent upon a
 12 webmaster to abide by the law, this is the law. This
 13 is what you have to do. Obviously I would have been
 14 producing those.

15 Q Then you mentioned that when you went to --
 16 after you started the job at XBIZ you continued being
 17 involved with 2257.

18 A Yes.

19 Q And how did that happen?

20 A I was -- I had segued back into more of an
 21 editorial journalism role. I was no longer in an
 22 advocacy role. So at that point, because inspections
 23 were ramping up, it was -- there was -- there was
 24 still a tremendous amount of work to do in order to
 25 help webmasters and people in the industry to

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1 understand what was expected of them, what -- you
 2 know, what the current situation was. And so that was
 3 more sort of like education.

4 Staff members were writing articles if there
 5 was any news or there was any information, doing
 6 interviews with people, and I was coordinating
 7 seminars.

8 And so after I left the Free Speech Coalition
 9 I went to XBIZ. So if I went there in August,
 10 immediately -- no, in September of 2006, immediately I
 11 started preparing for the first ever February show of
 12 XBIZ. And it was huge. That's the -- that's when I
 13 got the FBI to come for the first time in history to
 14 address the industry at that show specifically about
 15 2257. So, yeah, I was steeped in it.

16 Q When you say the first ever February show, do
 17 you mean the first show --

18 A For XBIZ.

19 Q The first XBIZ show or the first show in
 20 February?

21 A The first XBIZ show.

22 Q The first show it had ever had?

23 A In February, yes, to go up against AVN.

24 Q Oh, okay.

25 A Yes. Yeah.

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1 Q Did this help?

2 A Did the --

3 MS. BAUMGARDNER: Objection.

4 BY MS. WYER:

5 Q Did bringing the FBI into the XBIZ show help
 6 with the competing against AVN?

7 A Immeasurably. I mean it was a home run. It
 8 was huge. And that wasn't the only thing I did there,
 9 I mean for that show. It was huge. Yeah. Yeah. I
 10 put them on the map. It was huge. It was a huge
 11 coup.

12 Q How did you arrange it?

13 A There -- I knew some -- I had some help. I
 14 knew some people. I didn't know Chuck Joyner that
 15 well, but I had a contact with him and they agreed to
 16 help put us together and I invited them. I just made
 17 my pitch, and he went to his superiors and got
 18 permission to do it. It was great.

19 Q Was it -- what happened during -- what was
 20 it?

21 MS. BAUMGARDNER: Objection. You want to
 22 make your question a little clearer?

23 BY MS. WYER:

24 Q Well, you were saying that Chuck Joyner came
 25 and it was great, so I was asking what happened.

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1 A It was a seminar where he came to talk about
 2 2257 inspections specifically. I asked him questions.
 3 That was the first part of the -- I forget if it was
 4 an hour or an hour and a half. We gave him plenty of
 5 time.

6 Then we had members of the audience write
 7 down questions which were submitted to attorneys to
 8 vet the questions to make sure that no questions were
 9 asked that could put the questioners in any jeopardy
 10 or trouble. The FBI is in the room. And then those
 11 questions were asked of Mr. Joyner and he answered
 12 them and then he left the room. And then for the last
 13 part the attorneys addressed the audience about what
 14 had just taken place. And that was -- that was it.

15 Q Was he the only one from the FBI --

16 A Yes.

17 Q -- who came?

18 A Yes. He was not the only FBI agent there,
 19 but he was the only one addressing the audience.

20 Q How did you know him before that?

21 A I didn't. I didn't know him. I knew of him
 22 because he was of the team who was, you know, putting
 23 together the inspections. I can't recall when I first
 24 heard his name or how -- when I first learned of him.
 25 I don't remember. But he was in charge or the -- I

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1 forget. I don't remember but he was present at every
 2 single inspection. And my understanding was he was
 3 either the leader of the team or the co-leader of the
 4 team.

5 Q So this trade show was February of 2007?

6 A 2007.

7 Q And what do you think the impact of that
 8 session was?

9 A Well, reading back from the article -- you
 10 know, at trade shows I'm always busy so I'm running
 11 here and I'm running there because my work is never
 12 done. But reading back from the article, it said that
 13 the audience was -- was very pleased with having him
 14 there and that they learned a lot from his answers.
 15 And so I believe that the reactions from the people
 16 who attended was very -- was positive.

17 In the article it said that the industry
 18 attorneys cautioned against taking everything that he
 19 said at face value. They asserted -- whatever. But
 20 that's what they said. But it was a very positive
 21 experience overall.

22 Q The article that you mentioned, this is the
 23 article that you said at the beginning you had looked
 24 at before this deposition?

25 A Yes.

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1 Q Is that what you're talking about?

2 A Yes.

3 Q And that was an article on XBIZ or --

4 A On avn.com. Mark Kerns wrote coverage of
 5 that meeting in 2007. So I just went onto AVN because
 6 I had forgotten -- I just wanted to remind myself when
 7 that meeting was that I had put that together, and
 8 then, of course, it all came back to me that that was
 9 in February of 2007, so I just read it last night just
 10 to -- you know, because I had forgotten. You know, it
 11 was so long ago.

12 Q So AVN covered this event?

13 A Yes. Yes. Well, yes. I know. I was like,
 14 gosh, I didn't even know that he was there, but he
 15 did. He had to because it's Mark Kerns and he has to
 16 cover this stuff so, yes. I think it was Mark who did
 17 it. You know something, it might have been someone
 18 else who covered it. It may have been another writer
 19 who covered it, but it was covered by AVN. Actually
 20 now that -- it might not have been Mark.

21 Q Did you have any further engagement with the
 22 2257 inspections that were going on at that time?

23 MS. BAUMGARDNER: Objection.

24 THE DEPONENT: No. I had no engagement with
 25 inspections other than once we learned of them,

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1 covering them. That's it. Um --

2 MS. BAUMGARDNER: You answered the
 3 question.

4 BY MS. WYER:

5 Q You can go ahead.

6 A Well, I did go back to Washington DC. There
 7 was a meeting at the FBI building when I was at XBIZ
 8 and I was invited to attend that. So I -- as a
 9 journalist. So I did attend a meeting in Washington
 10 DC at the Hoover Building with the FBI, which was
 11 invited. It's the only meeting where members of the
 12 industry were -- came in and we had a meeting to talk
 13 about inspections. I attended that meeting. But in
 14 terms of my involvement since then with 2257, it has
 15 been journalistic, and then also as a member of the
 16 board of directors of the Free Speech Coalition.

17 Q When was that meeting that you talked
 18 about?

19 A Oh, gosh. I looked that up. It was in 2007.
 20 2007. I don't remember the month. I believe later in
 21 the year.

22 Q This was the meeting at the FBI
 23 headquarters?

24 A Headquarters. Correct.

25 Q And who else was there?

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1 A A lot of people. Industry attorneys were
 2 there representing companies. There were owners of
 3 companies there. There were over ten of us that went
 4 there, that traveled back there for this meeting, half
 5 a dozen agents including an assistant director, and
 6 Chuck Joyner was there. So quite a -- a pretty
 7 sizable group.

8 Q What were you told about the purpose of the
 9 meeting before it happened?

10 A The purpose of the meeting, as I understood
 11 it, was simply to discuss the inspection regime and to
 12 address any questions the industry might have about
 13 it.

14 Q And is that what happened?

15 A Yes.

16 Q What was your impression?

17 A Extremely informative meeting. My impression
 18 was that the FBI agents were doing their job and were
 19 amenable to making inspections as -- you know, as easy
 20 and effective as possible. That was the impression
 21 that I had. They answered all the questions. And
 22 people, as I recall, seemed to be generally satisfied
 23 with the answers, despite the industry's opposition to
 24 2257. So essentially to make a bad situation as, you
 25 know -- you know, as survivable as possible. That was

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1 the point of it.

2 There was a lot of -- there have always been
3 a lot of questions about inspections, you know, and
4 what people are responsible for. A lot of confusion.
5 So that was the purpose of the meeting.6 Q Generally what is your perception of the
7 relationship between the Government and the adult
8 industry, the Federal Government?9 A Generally my feeling is that the Government
10 has a generally hostile position with respect to adult
11 entertainment, but it is a legal industry and so my
12 sense is that -- you know, there's different
13 administrations and they bring -- they seem to bring
14 different points of view to bear with respect to the
15 industry. But it's tough. I mean which part of the
16 government? I'm not sure how to answer that question.
17 Maybe you can be more specific.18 There's a natural -- I mean there's a natural
19 antagonism with adult entertainment because there's
20 criminal laws that impact it. So that's always in
21 play.

22 Q Criminal laws. Do you mean obscenity laws?

23 A Yes, obscenity laws. Zoning laws. Zoning
24 laws are very, very serious and impact the adult
25 entertainment industry in a really big way. Negative

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1 often.

2 Q The zoning laws are local.

3 A Yes. But in my view, the adult entertainment
4 clubs and businesses are the front lines of adult
5 entertainment. I personally write about them as
6 frequently as I can because I don't necessarily
7 separate them from the, you know, San Fernando Valley
8 side of the industry. I mean they're out there on the
9 front lines and they have to deal with a lot of
10 stuff.11 Q Let's talk about your Daily Babylon site
12 which is listed on your LinkedIn profile.

13 A Yes.

14 Q It says you started the site in April 2009?

15 A Yeah.

16 Q So what is that?

17 A Well, Daily Babylon was begun as a project
18 with other -- with partners that was hopefully going
19 to become a going concern. And we started it that way
20 and it didn't work out that way. But that's how it
21 was begun, as a side project from our regular jobs
22 that would develop into something that we could, you
23 know, monetize and maybe develop into something that
24 could actually support us so that we could do our own
25 thing, you know. So that's how it began.

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1 Q At the time you started it, where were you
2 working?3 A Well, if that's April 2009, I'm -- that's a
4 time period where I'm mostly doing freelance, you
5 know, and I'm just -- I'm doing freelance articles.
6 I'm probably still part time at sex.com and I'm just
7 cobbling together a living, because it's after the
8 recession hit. And so that's during that time period
9 where I was really looking to be, you know, aggressive
10 in terms of building something and making something
11 and making our own business and doing something like
12 that. So that was during that time period in April of
13 2009.14 And so even if I left -- you know, you can't
15 take these necessarily to the bank. Did I finally
16 leave XBIZ in August? It might have been, but I had
17 been pared down so much by that time and I don't even
18 remember at that point. So April, May, June, July,
19 August, during that time period, I'm totally -- I
20 simply don't remember exactly. But what I do recall
21 was this feeling that I had to get something going. I
22 had to, you know -- we wanted to make something of our
23 own, and that's what Daily Babylon was supposed to
24 be.

25 Q But it didn't turn out like that?

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1 A It didn't work out. We lost our CEO because
2 of his problems with his other company. And we
3 didn't -- we weren't -- we didn't get the resources we
4 needed. We had everything in place. We had our site.
5 We had 600 stories in there. I put a business plan
6 together. I put everything together. I was working
7 with him, and then it just all fell apart.8 And then I lost Kathee Brewer who had been at
9 AVN and is now at YNOT, wonderful writer and just, you
10 know, extremely just -- just really fabulous
11 individual. You know, we just couldn't hold it
12 together. So she went off to YNOT and she's still
13 there and she's just -- you know, they have her
14 working double time. And we just -- we couldn't --
15 you know, we couldn't get it. So then it just all
16 came back to me, and I was just doing my best.17 But then I went right to AVN. And once I got
18 to AVN, I was the only person covering the online
19 industry. It was just -- if I could post up
20 something, a story or two to Daily Babylon even during
21 the week with everything that I had to do, I was lucky
22 to do that. So it just -- we had several -- like a
23 six-month time period we tried to get this thing off
24 the ground. We couldn't do it. I mean just life
25 intruded so.

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1 Q Well, that kind of answers this. But --
 2 MS. WYER: I'll just mark this as Exhibit
 3 Hynes 2.
 4 (Whereupon, a two-page document was marked as
 5 Exhibit 2 for identification.)

BY MS. WYER:

7 Q Do you recognize this?
 8 A Yeah.
 9 Q So is this from the Daily Babylon website?
 10 A Yes, this absolutely is.
 11 Q And this is that part of the website that
 12 describes the people --
 13 A Yes.
 14 Q -- involved in the website?
 15 A Yes. Those are the three people, me, Kathee,
 16 and Scott.
 17 Q So who is Scott?
 18 A Scott was our business person. He was the
 19 person who's going to take care of business while we
 20 made the site, and that's the person who we -- who
 21 totally imploded, just totally imploded.
 22 Q He imploded?
 23 A His business imploded, and he imploded
 24 personally, his relationship, everything in his life
 25 fell apart after his -- he had a business in adult

1 platform that's easier for me to do. The way it's
 2 structured right now is like a full site, and we had
 3 stories -- lots of stories in each one of these areas,
 4 money, legal politics, cultural, and society. There's
 5 600 stories in there, but I can't do it by myself. I
 6 have to turn it into a simpler type of blog and then
 7 continue on with it with a similar mission but just
 8 simpler, because it's impossible for me to do this at
 9 AVN and then also do it here. I can't. So that's
 10 what I'm doing right now.

11 MS. WYER: I'll mark this as Hynes 3.
 12 (Whereupon, a two-page document was marked as
 13 Exhibit 3 for identification.)

BY MS. WYER:

15 Q Do you recognize this?
 16 A Yes.
 17 Q This is the about Babylon page on the Daily
 18 Babylon website; right?
 19 A Uh-huh.
 20 MS. BAUMGARDNER: You have to answer
 21 verbally, Tom.
 22 THE DEPONENT: Okay.
 23 BY MS. WYER:
 24 Q So what does this mean?
 25 MS. BAUMGARDNER: Objection.

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1 that had been there for many years, very respected
 2 person. And I mean that has nothing to do with this,
 3 but there was just -- his life fell apart, and with it
 4 his role with us as well. So that's what happened.

5 Q So this isn't really -- is this active
 6 still?

7 A No, this is not. You know, this is still --
 8 I mean, what I'm doing -- the site now, that's still
 9 on the site, but it's not relevant anymore. I'm in
 10 fact -- and after my accident, in fact, I thought that
 11 the site went offline when I checked it. I was in the
 12 hospital for three weeks. I mean it was a very
 13 serious accident. I had seven surgeries and I wasn't
 14 paying attention. And when I got back home I checked
 15 the site and it was offline and I thought I had it for
 16 another year. And I called Go Daddy and I had it up,
 17 you know, within a day. I didn't even know it had
 18 gone offline because I wasn't checking and I was in
 19 the hospital. You know, I was just on my back the
 20 whole time.

21 So now what I'm doing is I'm going to -- it's
 22 on a Joomla platform. That's a CMS sort of platform.
 23 I'm going to switch over to WordPress. I am not going
 24 to let Daily Babylon go because I love the name and I
 25 love the idea, but I need to switch it over to a

1 THE DEPONENT: It's an attempt to define what
 2 we're about.

BY MS. WYER:

4 Q Does this reflect what you were saying about
 5 what you had hoped the Daily Babylon would be?
 6 A Yes.
 7 Q Is it still accurate in any way?
 8 MS. BAUMGARDNER: Objection.
 9 THE DEPONENT: Parts of it may still be
 10 accurate.

11 MS. BAUMGARDNER: Take your time to read
 12 through it.

13 THE DEPONENT: Some of it is relevant, some
 14 of it no longer is because there's, first of all, no
 15 longer a we. So there's no longer a Kathee Brewer.
 16 So it's just me. And I'll probably have to cut back
 17 on some of this. It's like kind of ambitious. I
 18 wanted to really cover everything. Everything -- you
 19 know, a limited form of everything. I had honed these
 20 subjects down to things that were of intense interest
 21 to the both of us and other writers that we knew,
 22 because the idea was obviously to bring in other
 23 contributors and then staff writers and build it up.
 24 But whether once I've moved it over to my new thing I
 25 stick with all of these, probably because they're

14 (Pages 53 to 56)

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1 A That would have been let's say -- boy, oh,
 2 boy. I would say -- when did we implode? It had to
 3 be late 2009. It had to be. It was late 2009. It
 4 wasn't long after -- it wasn't long -- you know, this
 5 was all like -- not this stuff, but all this, like
 6 this was posted when? This was updated in May of
 7 2009. So putting the whole site together. We're all
 8 done. We're all ready to go and the whole thing falls
 9 apart. So it was 2009. And exactly when, I don't
 10 know.

11 Q And this was because of the recession?

12 A Yeah, basically and our partner -- our
 13 business partner, the partner we were counting on to
 14 take care of the business side was no longer available
 15 to us. And then we ran out of time essentially where
 16 we had to -- you know, unless you've got a buffer, a
 17 zone to give yourself where you can survive and pay
 18 your bills for six months while you're wrapping up
 19 your business or something like that, you've got to
 20 get back to work.

21 And so at a certain point in time I ran out
 22 of time. And so, you know, I've been very lucky. And
 23 then AVN came back to me and offered this job, you
 24 know, a position making much less than I was making
 25 before, but it was a job I was happy to have and happy

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1 to be writing again.

2 Q So you don't keep records under the 2257
 3 requirements?

4 A I do not.

5 Q Have you ever kept --

6 A No.

7 Q -- those records?

8 A No. No.

9 MS. BAUMGARDNER: Let her finish.

10 THE DEPONENT: I'm so sorry. No.

11 BY MS. WYER:

12 Q Have you ever created images of sexually
 13 explicit conduct?

14 A No.

15 MS. WYER: Let's go to the -- let this be
 16 marked as Hynes 7.

17 (Whereupon, a 21-page document was marked as
 18 Exhibit 7 for identification.)

19 BY MS. WYER:

20 Q Do you recognize this document?

21 A Yes.

22 Q These are your responses to the first set of
 23 written discovery requests.

24 A Correct. Yes.

25 Q How were these responses prepared?

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1 A I answered the interrogatory questions and
 2 then sent them off to the attorneys.

3 Q So you prepared the answers?

4 MS. BAUMGARDNER: Objection. That's not what
 5 he said.

6 THE DEPONENT: I answered the questions I was
 7 able to answer and -- I mean we prepared this
 8 together.

9 BY MS. WYER:

10 Q Meaning you and your --

11 A Yeah. I didn't actually create this
 12 document. I made my own Word document and sent it
 13 back to the attorneys and then received this.

14 Q Let me just ask. What is your claim in this
 15 case based on?

16 A My claim in this case is simply based on the
 17 fact that my -- I believe my expression has been
 18 chilled because of 2257. For me, it's what I'm not
 19 prepared to do rather than what I have done and the
 20 burden that I have incurred. If there's been a
 21 burden, it's because I'm censoring myself, the types
 22 of images that I might use on the site because I
 23 don't -- I can't -- I don't have any money to use a
 24 third-party service. They would have to be kept in my
 25 home. I have a nine-year-old. My wife has nothing to

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1 do with the industry. We don't -- I'm not a porn guy.
 2 I cover the industry and don't want agents at my --
 3 I'm just not going there. If I had an office or
 4 something like that. I'm not doing that. So that is
 5 the -- that has been my situation that the records
 6 will be kept at home and I'm -- that is -- that's --
 7 that's my part of -- that's my position with respect
 8 to this case.

9 Q It's based -- so this is your concern, that
 10 the records would be kept at your home?

11 A In addition to other concerns that I have
 12 with 2257, that it's essentially impossible to comply
 13 with. Yes, that was probably the deciding factor or
 14 one of the deciding factors, that I wanted to avoid
 15 triggering 2257. And that is still the case with
 16 whatever the new iteration of Daily Babylon will be.

17 Q What is it that you would do that you have
 18 not done in the absence of the requirements?

19 A I would probably be a lot more open to using
 20 images that I am now unwilling to contemplate using
 21 that could, in fact, trigger 2257. And if I was
 22 unsure, I would err on the fact that they did, which
 23 means that I would of necessity, because I follow the
 24 law, have to keep the records, have to abide by
 25 everything. That's just it for me. I don't break the

17 (Pages 65 to 68)

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1 law. So I'll avoid the law rather than engage this
 2 one. I mean I will avoid it.

3 Q Where would these images come from?

4 A They might come from industry sources. They
 5 might come from -- they might come from -- I might
 6 create them myself. They could come from any number
 7 of areas. I might go on set. I might shoot something
 8 that triggers 2257 at a trade show, at a party. They
 9 might be sent to me as part of marketing materials,
 10 any number of ways. I might find them on the Internet
 11 and I might be able to use them. They might have a
 12 free open copyright that I can use. Any number of
 13 ways.

14 Q Do you take photographs on sets normally?

15 A Normally, no, because I'm the online guy. I
 16 don't normally go on sets, but I've been on some and
 17 I've been in proximity to adult activity certainly
 18 over the years. So I would want to cover it.

19 Q Have you ever created a photograph of --

20 A No.

21 Q -- of sexually explicit material?

22 A No, I have not. I have not.

23 Q Looking at your response to Interrogatory 10.

24 A Uh-huh.

25 MS. BAUMGARDNER: Take your time to read it

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1 marketing materials of differing explicitness, to say
 2 the least. They can come in, you know, just -- you
 3 know, just -- it's just unbelievable what you will be
 4 sent. So you take that as an editorial entity,
 5 whether it's AVN, XBIZ, or me. You can -- it's up to
 6 you what part of those images you use or how you
 7 utilize them.

8 So this is just saying -- that is just the
 9 process. This is the process. They come in. You use
 10 them as they are or you change them or you create
 11 something new with them. And so that's what the --
 12 that's what the intent was. You know, that's what the
 13 process ideally is.

14 BY MS. WYER:

15 Q Do you receive this marketing material?

16 A Less and less now for Daily Babylon. Hardly
 17 at all because it's fallen off the map. When we were
 18 ramping up in 2009, people in the industry knew us and
 19 we were sending out things, and I had also signed up
 20 for press releases. So I still, in fact, on my Daily
 21 Babylon account will receive those, because what
 22 they'll do is they'll just put you on a list and
 23 they'll keep you on the list and they send out their
 24 PR. So I still will occasionally receive PRs, but I
 25 don't receive nearly -- and the PRs will sometimes

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1 first, Tom.

2 THE DEPONENT: Okay.

3 BY MS. WYER:

4 Q So it says on the top first paragraph, the
 5 first paragraph on Page 6, so the next page. It says,
 6 "For Daily Babylon, I use graphics to most accurately
 7 illustrate a story, often using marketing materials
 8 provided by companies, including box covers, banners,
 9 e-mailed graphics, or other pre-produced marketing
 10 materials that I may either use as provided or change
 11 to suit my own purposes. I might, in fact, use
 12 supplied images along with my own, or other licensed
 13 or bought images to create something original." Did I
 14 read that accurately?

15 A You did.

16 Q What do you mean by this?

17 A Hum. Well --

18 MS. BAUMGARDNER: Objection. Go ahead.

19 THE DEPONENT: I mean hum. I don't want to
 20 just reread it. It means -- I mean it's really
 21 literal. These are my words. You create a graphic.
 22 You have an image to illustrate a story. You know,
 23 it's either -- you know, you either try to be creative
 24 and -- you know, I mean it's as simple as that.

25 Lots of people in this industry provide

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1 have images attached to them for use or not.

2 And so -- but I receive far fewer now because
 3 Daily Babylon has, for all intents and purposes, been
 4 moribund for the last couple of years, and so not so
 5 much. But we did -- we were receiving them. And all
 6 you have to do is sign up to receive press releases.
 7 Send them to me at AVN and send them over here also,
 8 and all the PR people will gladly do that.

9 Q So when you were getting this PR material,
 10 were you using images from it?

11 A Well, as I state here, of course if I did use
 12 them -- if I used explicit ones, I would be triggering
 13 U.S.C. 2257. So, in fact, I was erring on the side of
 14 caution to not trigger it. So if they came in and
 15 they were explicit or if I wanted to use them and I
 16 thought they triggered 2257, I wouldn't use them.

17 Q But did you use other images from --

18 A Well, what I started doing on -- what I
 19 started doing for a lot of my stories was I would find
 20 a book on amazon.com where the book had some sort of
 21 relevance to the story and it was a really cool box
 22 cover, and I would use the book to illustrate my story
 23 and link that image to Amazon so that maybe I could
 24 drive some sales of the book to Amazon to those
 25 people.

18 (Pages 69 to 72)

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1 plus the knock on the door means, yes, I'm not -- I'm
 2 not going to assume any risk of criminal prosecution
 3 under the statute, as I wrote here. I'm going to
 4 avoid it. I'm not going to do it. I can't. I have
 5 to support my family. There's no one else.

6 BY MS. WYER:

7 Q Could you explain more what you mean when you
 8 were talking about the implications?

9 A The inference that it's criminal, that
 10 there's a criminal statute, in my mind, the inference
 11 from that. What is being inferred is that the
 12 industry wants to use these underage, and we have to
 13 have these statutes in order to prevent them from
 14 doing what they want to do, which is to use underage
 15 performers even though it's already, you know, one of
 16 the worst crimes on the books that you can do.

17 Not only do I find that wrong, I find it
 18 offensive. And that is precisely what I read into
 19 these statutes. Absolutely, literally and precisely,
 20 that you can only infer that from adding this
 21 criminal -- criminal remedy onto this. It's not a
 22 fine. It's not a, you know, some sort of other sort
 23 of business related sanction. It's not a sanction.
 24 It's jail time potentially. And that's just -- you
 25 know, I don't know.

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1 time. I mean, you know, we get a number of years
 2 under your belt and you know. And if you're dealing
 3 with people you don't know and you don't know where
 4 images come from, you might do some more work on that,
 5 you know, so.

6 MS. WYER: I'll mark this as Hynes 8.

7 (Whereupon, a four-page document was marked as
 8 Exhibit 8 for identification.)

9 BY MS. WYER:

10 Q At the bottom of this exhibit do you see
 11 where it says XBIZ Premiere?

12 A Okay.

13 Q Do you recognize this as the kind of content
 14 that is -- well, have you seen this article?

15 A I have not.

16 Q Do you recognize this as the kind of article
 17 or material that could appear on the XBIZ Premiere
 18 website, or are you familiar with XBIZ Premiere?

19 A This is actually from the magazine. So this
 20 appeared in the magazine, I presume, because this is
 21 XBIZ Premiere, which is a print magazine. This seems
 22 to be the type of ad that is --

23 MS. BAUMGARDNER: Take your time to review
 24 it.

25 Are you talking about the news story or the

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1 My understanding is there's not too many
 2 other regulatory schemes that necessarily, you know,
 3 come with that. And if they do, I just think there's
 4 a really good reason. I don't see it here. That's
 5 what I mean by inference.

6 That's the inference that I read into that,
 7 that you're inferring that these people want to do
 8 that. And I don't believe it. It's not my
 9 experience. It's not what I believe about this
 10 industry or the people in it. And even if they
 11 wanted, there's child pornography laws. You face 15
 12 years. It's just not going to happen.

13 Q So do you -- if you were going to use an
 14 image -- a sexually explicit image in the absence of
 15 the requirements, would you do anything to verify the
 16 ages of the people appearing in the image?

17 A Would I do anything to verify the ages of the
 18 people? Absent these regulations, other than a common
 19 sense assessment of the content, probably not.
 20 Probably the answer is no.

21 Q So you would just rely on looking at them?

22 A By and large, yes. The vast majority of
 23 images, you know, that we use are performers who we
 24 know. And I would say -- and, you know, are companies
 25 that we have worked with, so I would say most of the

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1 advertisement?

2 MS. WYER: The whole thing.

3 THE DEPONENT: Oh. It looks typical of what
 4 they might publish.

5 BY MS. WYER:

6 Q And when you say "this seems to be the type
 7 of ad," what were you --

8 A These are box covers and they don't look
 9 entirely unique to me.

10 Q So is this the kind of PR material that you
 11 were talking about -- or this isn't from an article.
 12 But this is an ad.

13 A Yes.

14 Q Can you tell by looking at these individuals
 15 what their ages are?

16 A No.

17 Q And I'm talking about the ad that appears on
 18 the first page of the article.

19 A Correct. No.

20 Q Do you think that these images trigger the
 21 2257 requirements?

22 A I'm -- I'm a little unclear. There's nothing
 23 sexually explicit here necessarily. I'm unclear.
 24 They -- they may. I have to tell you, I'm not sure.

25 Q Do you recognize the individuals?

22 (Pages 85 to 88)

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1 A I wouldn't verify ages because I wasn't -- I
 2 wasn't -- I wasn't triggering 2257 so the issue of age
 3 for me was not an issue.
 4 If there's someone -- if there's an image for
 5 Daily Babylon that I think even might remotely we're
 6 flirting with underage territory, I'm not going to use
 7 it. But I'm not -- but it's not a question of age
 8 anyway. Because if I decided, which I wouldn't,
 9 because it's an adult site, even if it's not a porn
 10 site, why would I put -- I probably -- though I think
 11 I actually put a story up with a picture of my son at
 12 one point. I think I did put one up there. And I
 13 think I had that. So I think -- as I recall, I think
 14 I did that once. Something happened or something, you
 15 know, and I put a picture of him, probably the only
 16 time I would do that. I don't like to mix that, you
 17 know.

18 But the issue of age is not relevant other
 19 than that -- other than my own, you know, disinterest
 20 in doing that because I'm not triggering 2257, so why
 21 would I worry about age.

22 Q But if there were no 2257 and you were going
 23 to use such images, would you know that people that
 24 appeared?

25 A It's hard for me to -- I can't theorize or

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1 cross where you have to -- what is it called?
 2 MS. BAUMGARDNER: I can't help you.
 3 THE DEONENT: Oh, shoot.

4 BY MS. WYER:

5 Q Cross-referencing?
 6 A Cross-referencing is, I think, is
 7 problematic. And my understanding is that the
 8 majority of people who were not compliant who were
 9 inspected, of the 20 or so people who were inspected,
 10 that that was their issue, that they weren't compliant
 11 because of, you know, they got that kind of stuff
 12 wrong.

13 And I think it's very confusing and very
 14 difficult for people, especially in this industry.
 15 That's particularly problematic. You know, the
 16 posting up, giving home information, which you can
 17 now, my understanding is, redact that. That was
 18 problematic. You know, there were certain things that
 19 were very problematic with 2257.

20 Q Do you see any chance that you would ever
 21 have to worry about cross-referencing if you were
 22 going to --

23 A Everyone does. If you're under 2257, you
 24 have to worry about cross-referencing.

25 Q Would you anticipate using the same -- images

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1 speculate. We do have 2257. We've got to live in the
 2 reality of 2257. So if there were -- you know, there
 3 was no 2257. There was no 257. You didn't see a lot
 4 of underage performers, you know, in this industry
 5 because we already had child pornography laws.

6 The sanctions were already so onerous, so
 7 serious that no one goes there. Plus if you're
 8 shooting people, whether it's a film or photographing,
 9 you need model releases. You're going to take that ID
 10 anyway because you need to protect your material for
 11 copyright purposes so that other people don't rip it
 12 off. You've shot those images. You have
 13 relationships with them. I don't see it. I don't see
 14 it.

15 We didn't have it before or even
 16 beforehand -- even before it was being -- you know,
 17 2257 languished there for years. It wasn't enforced.
 18 We didn't really have a problem in this industry.
 19 Whatever problems there were with underage performers
 20 were -- even few and far between doesn't begin to
 21 state how rare it was.

22 Q Other than the criminal possibility of
 23 criminal sanction, is there anything specific in the
 24 requirements that you find problematic?

25 A I think the cross -- what is it called? The

1 of the same person more than once?

2 A Under the original scheme for Daily Babylon,
 3 absolutely. Since, you know, you're covering the same
 4 companies, the same performers, doing different
 5 things, so absolutely. Totally. Frequently.

6 Q And now?

7 A Not at all. Not really. But just -- I'm not
 8 actually doing Daily Babylon. But if I get back to
 9 it -- you know, it's hard for me -- I still want to
 10 cover the industry. I'll just have to do it in just a
 11 totally safe way. That's just what I'll have to do.

12 There's tons of images of performers and of,
 13 you know, people that you can use that are -- they're
 14 actually clothed. They're just there. They're
 15 glamour shots or something like that. So there is
 16 other ways to get around it. Totally. But it's not
 17 as -- I don't know. It's not -- you know, it's -- you
 18 know, it's safe. It's not -- you know, it may or may
 19 not illustrate the point -- the story or the point.

20 Q And the other thing you mentioned about
 21 posting -- I think you -- were you talking about the
 22 transmission of performer address information?

23 A From primary to secondaries. That was always
 24 extremely problematic. So my understanding now is you
 25 can send documentation and redact, you know, addresses

24 (Pages 93 to 96)

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1 is that often how content gets to someone, there's
 2 brokers, they buy it. It's a complicated, as you may
 3 know, content world out there, how content goes.

4 Generally speaking -- I want to be careful
 5 here because, you know, if -- in a world -- I don't
 6 really have a problem with a -- with a notification
 7 stating where the records can be kept -- where you can
 8 find those records. What -- you know, and so, you
 9 know, in a general way, I -- you know, if a regime
 10 could be created that is not onerous and not
 11 burdensome and where there's a trail back to the
 12 primary producer where these records can be found and
 13 it's workable and there's no criminal sanctions
 14 attached to it, that's relatively reasonable, and I
 15 wouldn't -- I personally would not have an objection
 16 to that, no.

17 BY MS. WYER:

18 Q Just trying to flush out what you were
 19 saying. Is that because the trail could be so
 20 convoluted and the primary producer and the --

21 A Yeah.

22 Q -- where the images ultimately show up, there
 23 could be many steps along the way, different places or
 24 intermediaries --

25 A Correct. I mean there are content brokers.

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1 There are businesses, you know, that are content
 2 brokers out there, and so they do provide content.
 3 There's white label entities that provide you with
 4 content, so they got that content from somewhere.

5 So, yes, there are -- there absolutely are
 6 intermediaries in this industry. But still my belief
 7 is that the content brokers, you know, deal in 2257
 8 compliant content and, you know -- so -- but, yes,
 9 that -- that's the complication, that there are
 10 intermediaries and it's not always directly from the
 11 producer, you know, right to the secondary producer.
 12 That's not insurmountable.

13 Q But without some kind of a way to link things
 14 back from a secondary producer, it could be very
 15 difficult to trace it back to the primary producer, or
 16 if the secondary producer does not have his own
 17 records or provide a way to link back to the primary
 18 producer, it would be very difficult to find the
 19 original records.

20 MS. BAUMGARDNER: Objection.

21 BY MS. WYER:

22 Q Is that right?

23 A You know, that's theoretical. I guess
 24 potentially. Potentially.

25 Q Oh, what time period were you a board member

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1 of the Free Speech Coalition?

2 A I -- from -- I joined -- I ran for the board
 3 when I was still at XBIZ, so I think it was like in
 4 2008, something like that that I ran and I was elected
 5 to the board. And I was a board member for two terms
 6 and then I declined to run again this last time. I
 7 think -- what is it? Two year terms? So eight, nine,
 8 ten, eleven, twelve. And then I just was done.

9 Q What does it mean to be a board member on the
 10 Free Speech Coalition?

11 A Well, it means that the board has a lot of
 12 responsibility of the Free Speech Coalition in terms
 13 of setting priorities, approving budgets, and doing
 14 the substantial things that boards do. It's not --
 15 it's a hands-on board, not just fund raising or
 16 anything, but actually helping to devise mission,
 17 focus, strategy, that type of stuff, the real -- all
 18 that stuff is taken and then implemented by Diane and
 19 the staff. But the board is quite involved.

20 Q How many people are on the board?

21 A That's a good -- 10 to 12, something like
 22 that.

23 Q Who are they? I mean you were a journalist.
 24 Who are --

25 A Yeah. Well, they're mostly company owners,

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Page 112

1 but there's some other types. That's one of the
 2 reasons I left is because writers and journalists on
 3 there. There should be more company owners. But it's
 4 a mix. It's a mix of people who are -- don't own
 5 companies but care about the issues and are sort of
 6 activist-minded and want to roll up their sleeves and
 7 help the industry get involved. And then company
 8 owners who have an obvious vested interest and, you
 9 know, a performer or two and then attorneys. It's a
 10 mix bag.

11 Q And company owners, you mean owners of
 12 companies that produce films, adult industry films?

13 A Not just that. They might be those. They
 14 might be owners of novelty companies or of website
 15 companies. So the owners come from -- you know, from
 16 the different areas of the industry, not just the
 17 producers. Because Free Speech Coalition represents
 18 all of those, you know, disparate sections of the
 19 industries.

20 MS. WYER: We'll mark this as 10, Hynes 10.
 21 (Whereupon, a two-page document was marked as
 22 Exhibit 10 for identification.)

23 BY MS. WYER:

24 Q Do you recognize Exhibit Hynes 10?

25 A I don't recognize it, but it's from Daily

28 (Pages 109 to 112)

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1 of reasons why I eventually left the ASACP.

2 Q What were the other reasons?

3 A The shift in mission.

4 Q Of --

5 A The mission shift.

6 Q That was what you were just describing
7 before the break?

8 A Uh-huh. And that's it basically. A lot of
9 this stuff really didn't come to light until many
10 years later.

11 Q So -- okay. I think that's covered. So
12 going back to your work on Daily Babylon. So if you
13 were going to write an article for Daily Babylon based
14 on -- you never know in advance what the topics of the
15 articles are going to be. You can't -- can you
16 predict with any certainty what the topics of articles
17 that you might write in the future might be?

18 A No.

19 MS. BAUMGARDNER: Objection.

20 THE DEPONENT: No.

21 BY MS. WYER:

22 Q And in short, you could write about anything
23 in the future really.

24 A Yes. Right.

25 Q And you don't know in advance what

1 BY MS. WYER:

2 Q And you're not getting marketing materials,
3 very much marketing materials right now?

4 A No.

5 Q But the kind of marketing materials you would
6 anticipate getting if you were to start up -- become
7 more active on the site again, what kind of things
8 would they be marketing or promoting?

9 A The same stuff, adult films. I don't really
10 do novelty on here, so websites, web content,
11 performers, parties, you know, anything involved with
12 their businesses I suppose.

13 Q So you don't know -- you can't predict
14 exactly what film or exactly what performer you might
15 get promotional material about.

16 A Correct.

17 Q And you can't predict who would be in the
18 images -- who would appear in the images that you
19 would get as part of that promotional material.

20 A Correct.

21 Q What kinds of -- who would the primary
22 producer be in this kind of material?

23 A Primary producer would be, I suppose, Vivid,
24 you know, a studio, or something like that or Wicked.
25 You know, they would be a primary producer or anyone

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1 promotional materials you might get in connection
2 with -- from -- if you did start up Daily Babylon
3 again and you did begin to get promotional materials
4 or marketing materials again, you don't know exactly
5 what the nature of those materials will be in advance.

6 A Correct.

7 Q So they could involve -- would this kind of
8 marketing material, would that material include
9 marketing about films or online production by
10 producers?

11 A Yes. Yes.

12 Q Online content produced by industries or
13 companies who are themselves creating or posting as
14 secondary producers depictions of sexually explicit
15 conduct?

16 A You've got to rephrase that for me, please.

17 Q Sorry. Is the kind -- what do the -- so
18 right now Daily Babylon is basically not functioning;
19 right?

20 MS. BAUMGARDNER: Objection.

21 THE DEPONENT: It's live, but it's more or
22 less moribund. I'm not actively posting to it but you
23 can go and access it and read all the past articles on
24 it. But it's not just being updated regularly.

25 ///

1 who's shooting primary content. So there's lots of
2 producers with primary content.

3 Q So essentially you could be getting marketing
4 material from any of those producers that could
5 contain images of sexually explicit material about a
6 film that hasn't even been made yet with performers
7 that you can't predict who they might be.

8 MS. BAUMGARDNER: Objection.

9 THE DEPONENT: I guess the answer is yes. I
10 don't -- I don't -- the answer is yes. I don't know
11 that they're going to send out. It's up to their
12 business, what they're producing. I don't know. They
13 send out press releases. We never know.

14 MS. WYER: I'll mark this as Exhibit Hynes

15 13.

16 (Whereupon, an 11-page document was marked as
17 Exhibit 13 for identification.)

18 BY MS. WYER:

19 Q Do you recognize this document?

20 A Yes. This is my answers to the second set of
21 interrogatories.

22 Q Did you go through the same process in
23 preparing these answers that you described for the
24 first set?

25 A Yes.

33 (Pages 129 to 132)

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1 Q Looking at Interrogatory 22, it starts on
 2 Page 6.
 3 A Okay.
 4 Q Did you have a chance to read that?
 5 A Uh-huh.
 6 Q So your response says, "As a journalist, I am
 7 subject to the code of ethics and standards of my
 8 profession as well as state and federal laws that
 9 prohibit the depiction of minors in sexually explicit
 10 expression." Did I read that correctly?
 11 A You did.
 12 Q What code ethics and standards are you
 13 subject to?
 14 A Of my profession to tell the truth, to
 15 protect my sources, to -- to basically -- that's it.
 16 You know, it's a hard job and it's very simple. Those
 17 are basically it.
 18 Q How did you become subject to these codes and
 19 standards?
 20 A Self-imposed.
 21 Q Did you go to -- did you get any degree in
 22 journalism?
 23 A I do not have a journalism degree.
 24 Q So how can it -- how does one know that
 25 you're a journalist?

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1 A Because I've been working as one. I've been
 2 working as one for years and years and years, so I'm a
 3 journalist. I backed into it.
 4 Q As a journalist -- do you have to get a
 5 license to become a journalist?
 6 A You do not.
 7 Q Do you enter into any kind of contract to
 8 follow journalistic codes and standards?
 9 A No, you do not.
 10 Q Is anyone who writes a lot of articles a
 11 journalist?
 12 A No.
 13 Q Who decides whether someone is a journalist
 14 or not?
 15 A I don't have that answer. I'm not sure that
 16 there is an answer to that. I'm not sure that there's
 17 a god journalist or journalist god that makes that
 18 determination. I just think -- there is no one who
 19 makes the final determination that someone is a
 20 journalist.
 21 Q So not everyone who posts articles on the
 22 Internet would qualify as a journalist in your view.
 23 A In my opinion.
 24 Q But someone could claim to be a journalist.
 25 Anyone who posted articles could claim to be a

1 journalist.
 2 A And often do.
 3 Q So like if I made a website and posted an
 4 article, I could say I was a journalist.
 5 A Yes.
 6 Q And what would be the difference between you
 7 and some random person like me who just --
 8 A I don't know. It's too vague. I would have
 9 to see. You know, I mean I can't say without -- about
 10 something I don't know with a specific -- they're
 11 either acting journalistically or they're not.
 12 Q But what is the definition of -- I mean you
 13 have a certain idea of what a journalist is.
 14 A Yes.
 15 Q So you would decide -- you would go and you
 16 can only decide whether another site is journalistic
 17 by going and looking at the site and seeing if it
 18 seems to meet your own standard criteria?
 19 MS. BAUMGARDNER: Objection.
 20 THE DEPONENT: Is the question what I would
 21 do? Yes.
 22 BY MS. WYER:
 23 Q So it would be a case-by-case --
 24 A Yes.
 25 Q -- decision?

1 A Yes.
 2 Q Or evaluation?
 3 A Yes.
 4 Q Going back to the first set of
 5 interrogatories, which was Exhibit 7. Look at
 6 Interrogatory 7.
 7 MS. BAUMGARDNER: Do you have a question?
 8 BY MS. WYER:
 9 Q I was indicating. Have you had a chance to
 10 read it?
 11 A Yeah.
 12 Q In the first paragraph you say the
 13 statutes -- "I wish to use visual depictions of
 14 sexually explicit imagery that depict mature adults on
 15 my website to illustrate its written content. The
 16 statutes are not narrowly tailored to advance any
 17 interest in protecting children as applied to sexual
 18 imagery depicting mature adults published as part of a
 19 story addressing adult topics on my website."
 20 Is there anything other than the points
 21 you've already made that you would provide as a
 22 further detail on why you think the statutes are not
 23 narrowly tailored?
 24 A Points -- other points I made where?
 25 Q That we've already talked about here today.

34 (Pages 133 to 136)

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1 A Only one, the Steubenville.
 2 Q Which one was that?

3 MS. BAUMGARDNER: Last one under H.
 4 BY MS. WYER:

5 Q What was that? Did that show an actual rape
 6 occurring?

7 A I'm just -- I'm sorry. I misunderstood the
 8 question. I'm just informed about the case and I
 9 didn't look at the actual documentary, so I don't
 10 know.

11 Q Have you seen documentaries that show rapes
 12 or sexual abuse occurring that would qualify as
 13 depictions of sexually explicit conduct?

14 A I'm sorry. The question again? Is it have I
 15 seen documentaries?

16 Q Have you seen documentaries that include
 17 footage of an actual rape occurring or sexual abuse
 18 occurring?

19 A I've seen documentaries on Abu Ghraib in
 20 which there's sexual abuse taking place.

21 Q In your view, would those images meet the
 22 definition of sexually explicit conduct under the
 23 requirements?

24 A I can't -- I don't know. I don't know. They
 25 were -- the ones I saw were redacted. I don't think

1 don't -- I don't know if they -- I don't know.

2 Q On your website -- I don't know if I have
 3 a -- do you remember on your Daily Babylon website
 4 listing Wicked as the Whore of Babylon or something
 5 like that?

6 A No.

7 Q Or something --

8 A No. No. No. That was going to be -- the
 9 Whore of Babylon was going to be a regular little
 10 feature where we picked someone who had done something
 11 especially horrible out there and they were going to
 12 be our weekly Whore of Babylon. And it could have
 13 been anyone. So Wicked, no. It was like people
 14 outside. It would have been like Jerry Falwell or
 15 someone like that. Public figures who did something
 16 so egregious that they earned the Whore of Babylon.
 17 That's all that was. Yeah, I had one up there and
 18 just everything fell apart, but it wasn't Wicked. I
 19 don't believe it was Wicked.

20 Q What is Wicked Pictures? Is it -- it's not a
 21 large -- is it a large --

22 A It's an adult entertainment studio.

23 Q Is it one of the largest do you think?

24 A It is -- I don't really know. It's one of
 25 the originals. It's one of the oldest. And it's one

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1 the original images were pixelated or redacted. So
 2 the original images were of actual sexual abuse, so it
 3 may very well.

4 Q Are there other examples that you can think
 5 of?

6 A For me personally, no.

7 Q Do you create -- you've already said that you
 8 don't create images yourself of sexually explicit
 9 conduct; is that correct?

10 A Correct.

11 Q Does that include private images or private
 12 communications?

13 A Correct.

14 Q So --

15 A Yes.

16 Q -- have you ever sent depictions of sexually
 17 explicit conduct through your cell phone, if you have
 18 a cell phone?

19 A I do, and I never have.

20 Q Have you posted such images on Facebook?

21 A Never.

22 Q Do you know other people who have sent images
 23 to their sexual partners depicting sexually explicit
 24 conduct?

25 A I don't know. I don't know yes or no. I

1 of the most famous. And I don't -- they're all
 2 private companies, so I don't know, you know, whether
 3 it's one of the largest or not. But it's certainly
 4 one of the largest in terms of brands.

5 Q And Vivid, is that another one --

6 A Yes.

7 Q -- similar to that?

8 A Yes.

9 Q Are there any others that are of similar age
 10 and brand recognition?

11 A Sure. Yes.

12 Q And size?

13 A Yes.

14 Q Like what?

15 A Evil Angel, Digital Playground. Those are
 16 just two. There's a number of studios that have been
 17 around for years.

18 Q When you were talking about the end of the
 19 period right before you got your current job at AVN --

20 A Uh-huh.

21 Q -- did you go bankrupt?

22 A I did.

23 Q So in this article --

24 MS. WYER: We'll mark this as Exhibit 14.
 25 (Whereupon, a two-page document was marked as

36 (Pages 141 to 144)

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1 Exhibit 14 for identification.)

2 BY MS. WYER:

3 Q This article is from your Daily Babylon
4 website?

5 A Yep.

6 Q Correct?

7 A Correct.

8 Q And it's about bankruptcy written by you?

9 A That's right.

10 Q So is it about -- it's written in first
11 person?

12 A Yes, it is.

13 Q Is it actually about your own bankruptcy?

14 A Yes.

15 Q Okay.

16 A And that's me. Not really. See, I had hair
17 then.

18 Q Bankruptcy does --

19 A Yeah, it does that to you.

20 Q So how many hours are you now working at
21 AVN?22 A Well, currently I'm on disability, so I work
23 full-time hours. Full time plus.24 Q Is that like many jobs where you actually
25 work more than 40?

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1 A Yes. I'm on salary, so if I have to work
2 more, I work more.

3 Q How many hours do you actually work?

4 A 60, 70. I don't know. I'm always there.

5 Even at home. It's a lot. I don't count. Better not
6 to count. I just do whatever.7 Q And that's one of the reasons that you said
8 you could not maintain the Daily -- the Daily Babylon
9 site dropped off because you no longer had time?

10 A Yeah, to devote to it.

11 Q Do you foresee that changing?

12 A Don't know what's going to happen. I don't
13 know. I really don't know. I -- I hope so.

14 Q But you don't know.

15 A I don't know.

16 MS. WYER: That's all I have.

17 THE DEPONENT: Okay.

18 MS. WYER: Thank you.

19 MS. BAUMGARDNER: I have a few follow-up
20 questions.21 I don't think they'll be long, but how are
22 you doing?

23 THE REPORTER: I'm okay.

24 MS. BAUMGARDNER: Like I said, I don't think
25 it will take long.

1 CROSS-EXAMINATION

2 BY MS. BAUMGARDNER:

3 Q Mr. Hynes, let's just talk about -- a little
4 bit about Daily Babylon. You've in no way abandoned
5 that project, have you?

6 A No.

7 Q It still remains very important to you,
8 doesn't it?

9 A Yes.

10 Q And it's an important avenue and outlet for
11 your expression on areas of great concern and
12 interest; correct?

13 A Correct.

14 Q Okay. So all the issues with regard to 2257
15 are just -- you haven't abandoned those. They are
16 still present. It's just not a business venture
17 that's going to be able to support you; is that
18 accurate to say?

19 A Correct. That is accurate to say.

20 Q Now, Ms. Wyer asked you questions about the
21 burdens of 2257 and what it imposes.

22 A Yes.

23 Q Including 2257A, which is kind of one of the
24 reasons for those new regulations to have been
25 effected --

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1 A Yeah.

2 Q -- that now applies to simulated sexually
3 explicit conduct; correct?

4 A Uh-huh.

5 Q You have to answer verbally.

6 A Yeah.

7 Q Yes. Okay. And you do know that both the
8 statutes make it unlawful for any person to fail to
9 create or maintain the records as required by the
10 regulations, do you not? Is that your
11 understanding?

12 A That is.

13 Q Okay. And so when we talk about what the
14 regulations require, Ms. Wyer asked you about it's not
15 particularly onerous or you would expect to get photo
16 IDs from people as part of the process of creating
17 sexual explicit expression; correct?

18 A I'm sorry. What is the question?

19 Q Ms. Wyer had asked you, you know, you
20 didn't -- whether you thought it was onerous or
21 unreasonable to require producers of sexually explicit
22 expression to collect IDs from people.

23 A Uh-huh.

24 Q Is that correct?

25 A Correct.

Page 1

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Free Speech Coalition,)
et al.,)
Plaintiffs,)
vs.) Case No.: 02:09-4607
Eric Holder,)
Defendant.)
- - -

Deposition of David Livingston, a plaintiff herein, called by the defendant for cross-examination pursuant to the Federal Rules of Civil Procedure, taken before Karen A. Toth, RPR and Notary Public in and for the State of Ohio, at the offices of Berkman, Gordon, Murray & DeVan, 55 Public Square, Suite 2200, Cleveland, Ohio 44113, on Tuesday, March 26, 2013, commencing at 11:56 a.m.

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1 APPEARANCES:
2 On behalf of Plaintiff David Livingston:
3 Lorraine R. Baumgardner, Esq.
4 Berkman, Gordon, Murray & DeVan
5 55 Public Square, Suite 2200
6 Cleveland, Ohio 44113

7 On behalf of the Defendant:
8 Hector G. Bladuell, Esq.
9 Trial Attorney
10 U.S. Department of Justice
11 20 Massachusetts Avenue, NW
12 Washington, DC 20530
13 - - -
14
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18
19
20
21
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24
25

DAVID LEVINGSTON

1 Of lawful age, being first duly sworn, as
2 hereinafter certified, was examined and testified as
3 follows:

CROSS-EXAMINATION

4 By Mr. Bladuell:
5 Q Good afternoon, Mr. Livingston.
6 A Good afternoon.
7 Q My name is Hector Bladuell. I'm an attorney
8 for the government in this lawsuit. Have you
9 been deposed before?
10 A No, I haven't.
11 Q Okay. Well, the purpose of this deposition,
12 as probably counsel has explained to you, is
13 for us to learn more about your claim. It's
14 not to discuss the merits of your claim.

15 We have a court reporter here and it's
16 very important that for every question that I
17 ask you you give a verbal response yes or no
18 and an explanation instead of a nod that could
19 not be transcribed.

20 A I understand.
21 Q I'm going to be asking you several questions.
22 If you don't understand a question that I ask
23 you please tell me and I'll try to rephrase.

1 (Pages 1 to 4)

Page 5		Page 7	
1	I'll try to make it clearer.	1	Q Did you review any documents in preparation
2	A All right.	2	for this deposition?
3	Q Your counsel may make some objections to some	3	A No, I didn't.
4	of my questions. Those objections are to	4	Q Okay.
5	preserve them for trial or to contest	5	MS. BAUMGARDNER: One of the things,
6	something about the question.	6	David, Hector would probably remind you is
7	A Yes.	7	wait until he finishes his question completely
8	Q Unless she instructs you not to answer though,	8	because it makes it difficult for the court
9	you can answer the question based on her	9	reporter when you are talking at the same
10	objection.	10	time.
11	I understand that you had eye surgery	11	THE WITNESS: Right.
12	last week; is that correct?	12	MR. BLADUELL: Thank you, counsel.
13	A Yes, I did.	13	Q Mr. Levingston, would you please describe your
14	Q Did it go well?	14	educational background?
15	A Still figuring it out, but yes. I had	15	A My educational background?
16	cataract surgery so now I can see better than	16	Q Yes.
17	I have since sixth grade. But I'm adapting to	17	A I have a Bachelor's of Science Degree in
18	reading glasses which I've never used before.	18	journalism from Ohio University. Did a couple
19	Q Did that surgery in any way impair your	19	years of graduate work in sociology before I
20	ability to recollect events in the past?	20	came to my senses and went and got a real
21	A No.	21	job. But that's the basics past high school
22	Q Did that eye surgery in any way affect your	22	education.
23	ability to understand my questions?	23	Q At what university did you take sociology
24	A No.	24	courses?
25	Q Any other medical condition that you suffer	25	A Ohio University.
Page 6		Page 8	
1	from that would impair your ability to answer	1	Q You have not received any medical training
2	my questions?	2	throughout your career?
3	A No.	3	A No. Other than first aid or something like
4	Q No medication -- you're currently under no	4	that, first aid training, Red Cross stuff. I
5	medications that would --	5	used to do mountain climbing so I paid a lot
6	A Thyroid pills.	6	of attention to first aid training.
7	Q But they would not affect your ability to	7	Q And could you describe your work history after
8	recall events?	8	you graduated from college?
9	A Right.	9	A Well, I'd like to start earlier than that
10	Q Now, you understand that you have taken an	10	because I actually started working as a
11	oath to tell the truth today?	11	newspaper photographer when I was 16 years old
12	A I do.	12	and worked at several newspapers while I was
13	Q Do you have any questions before we begin the	13	in college. And during that time I was also
14	deposition?	14	drafted and spent a couple years in the Army
15	A No, I don't.	15	in the bad old days when we had a draft. And
16	Q Can you please state your full name for the	16	then went to college and did the degree in
17	record?	17	journalism, which was really a photojournalism
18	A David Bertram Levingston.	18	program that wasn't formally established at
19	Q And did you prepare for this deposition today?	19	that time. So it combined photography courses
20	A Yes.	20	and journalism courses.
21	Q How did you prepare for the deposition today?	21	Then I got a job after the time in grad
22	A I just talked with my attorney.	22	school with the federal government in
23	Q Okay. Did you make any notes preparing for	23	Columbus, Ohio as a photojournalist and did
24	this deposition?	24	that for five years. Got a job at an Air
25	A No.	25	Force base as an editor of a base newspaper

1 and within a year of that I was promoted to
 2 the chief of the public affairs office for
 3 that Air Force base, Newark Air Force Base in
 4 Ohio. And had that job for about 15 years, at
 5 which time the base wound up on the base
 6 closure list and I went through the base
 7 closure and did the -- was responsible for
 8 communicating the impact of all of that to all
 9 of the workers at the base.

10 I considered that the high point of my
 11 career because we had no suicides and no
 12 workplace violence, which is almost unheard of
 13 in base closures. And I'd like to take at
 14 least a tiny bit of the credit for that, for
 15 my communication work.

When the base closed the work --

17 Q What year did the base close?

18 A '96.

19 Q Okay.

20 A At that time my work had been noticed and I
 21 was offered a job at Wright-Patterson Air
 22 Force Base at the headquarters for Air Force
 23 material command.

24 Q When you say your work was noticed, what kind
 25 of work?

1 Q Do you receive a pension from your government
 2 service?

3 A I do.

4 Q And is that pension the bulk of your income?

5 A Yes.

6 Q Do you receive any income from your
 7 photography work?

8 A I seldom net anything out of it. I do
 9 occasionally sell prints but not to where it's
 10 adding any significant income.

11 Q Okay. Would you say that it's less than five
 12 percent of your income?

13 A Yes.

14 Q And do you live in Springfield, Ohio?

15 A Yes, I do.

16 Q Do I have that right? Okay. Are you married?

17 A Yes, I am.

18 Q How long have you been married for?

19 A This time?

20 Q Yeah.

21 A 18 years. It will be 18 years in July.

22 Q And you were married before?

23 A Yes.

24 Q Okay. Do you have children?

25 A Yes.

1 A The work at Newark Air Force Base as chief of
 2 the public affairs office. The work
 3 particularly in the base closure.

4 There were -- they saw that I did a
 5 good job there and offered me the job at
 6 Wright-Patterson where I was -- most of the
 7 time I was there I was deputy chief for media
 8 relations for Air Force Material Command. And
 9 then I retired from there when I hit
 10 retirement eligibility and have been retired
 11 for five and a half years now.

12 Q Okay. So you retired in around 2007 or 2006?

13 A It was beginning of November and it will be
 14 six years this coming year. Math is not my
 15 strong point.

16 Q And since your retirement what have you been
 17 doing?

18 A Photography. And I also did photography
 19 during all of that time. In fact, I had a
 20 portrait studio for a while during the time I
 21 was working at the Newark Air Force Base and
 22 never -- I'm a photographer first and all
 23 these other things were just jobs. So I've
 24 always done photography. Since retirement
 25 it's been what I do to stay busy.

1 Q How many?

2 A Three.

3 Q And how old are you?

4 A I am, let's see, 61 now, yeah.

5 Q How did your interest in photography develop?

6 A How did it develop? I discovered it when I
 7 was a sophomore in high school and was so
 8 excited by it that I checked an encyclopedia
 9 of photography out of the library and read it
 10 all the way through, taught myself to develop
 11 film and make prints and all that sort of
 12 thing. And then very shortly after that at
 13 the age of 16 I walked into a local daily
 14 newspaper and they hired me. So from there I
 15 was a photographer intern for a while and
 16 became a photographer that way.

17 Q So you've been a photographer for a long time?

18 A Yes.

19 Q Would it be accurate to say that it's been 30
 20 years?

21 A More than that.

22 Q 40?

23 A 40 professionally. I started -- I started my
 24 first job as a photographer in 1968.

25 Q How much would you say you make a year making

Page 13			Page 15		
1	photography, if you had to put a dollar amount	on it?	1	A	I don't know.
2			2	Q	Would you say that it was 90 percent?
3	A	It varies a lot. I think last year I had	3	A	No.
4		about four or \$500 in print sales. It used to	4	Q	Less than 20 percent?
5		be more before the economy crashed. All of a	5	A	Yes.
6		sudden the collectors stopped buying.	6	Q	And I understand you have one publication?
7	Q	Now, from that four or 5,000 --	7	A	One?
8	A	Hundred.	8	Q	Publication.
9	Q	Four or 500?	9	A	I have many publications.
10	A	Hundred, yes.	10	Q	Could you just let me know, can you tell me
11	Q	And is that five percent of your income?	11		your publications?
12	A	No.	12	A	Well, my work has been published since 1968 in
13	Q	No. So is that more?	13		many different places. Are you referring to
14	A	Less.	14		the one book that I've published?
15	Q	Less. Okay. So this 400 and \$500,000 in	15	Q	Yes.
16		photography is much less than your government	16	A	Yes, I have self-published one book.
17		pension?	17	Q	Okay. And that's "The Figure in Nature"?
18	A	\$400.	18	A	Yes.
19	Q	400. I'm sorry.	19	Q	Mr. Livingston, do you produce videos?
20		MS. BAUMGARDNER: I was going to	20	A	No. Well, I guess I should qualify that. I
21		object.	21		actually have worked on a couple videos that
22	Q	I'm sorry. \$400?	22		haven't been published, although an early
23	A	Yes.	23		version of one is available on YouTube right
24	Q	Okay.	24		now.
25	A	It's not a significant source of income.	25	Q	You don't produce any sexually explicit
Page 14			Page 16		
1	Q	Okay. Now, from those 400 to \$500 how much of	1		videos?
2		that is production of sexually explicit	2	A	No.
3		material?	3	Q	Could you describe how your photographic work
4		MS. BAUMGARDNER: Objection as to time	4		has evolved since 1968 in terms of the context
5		frame.	5		of the photography that you take and that kind
6	Q	Well, you said last year you made 400 to \$500	6		of thing?
7		in selling photography, correct?	7	A	I'd like to think it's gotten better but I
8	A	Yes.	8		don't know that my interests have changed
9	Q	And how much of that from last year was	9		significantly from the beginning.
10		sexually explicit material?	10		I've always been interested in
11	A	None.	11		documentary work, reported or reportage, that
12	Q	None?	12		sort of thing, and still occasionally I have
13	A	Because when 2257(a) took effect I stopped	13		several projects along those lines that I'm
14		doing anything that might fall under 2257(a).	14		working on right now.
15	Q	Okay. You produced sexually explicit material	15		And I started as a teenager. I was
16		from 2005 to 2009, correct?	16		interested in women and have always one way or
17	A	Some.	17		another photographed women. I think that has
18	Q	Some, yeah?	18		evolved into a more sophisticated product in
19	A	Very small amount.	19		later years.
20	Q	Okay. And what percentage of the income that	20	Q	Would you say that photographing women has
21		you got in photography during those years	21		been the bulk of your photography work
22		would you say was production of sexually	22		throughout your career?
23		explicit material?	23	A	Not throughout but in the -- since 2002 it has
24		MS. BAUMGARDNER: Objection. You can	24		been.
25		go ahead and answer if you know.	25	Q	Okay. And what was your photographic work

1 before you started concentrating on women?
 2 A Photojournalism, portraits, weddings, anything
 3 for a buck at my studio.
 4 Q So since 2002 have you done any photographic
 5 work for newspapers?
 6 A Yes. I also photograph dance and some of
 7 those dance photographs have been published in
 8 newspapers in connection with the productions
 9 that I was photographing.
 10 I'm trying to think what else has been
 11 -- for a while in the late '90s and beginning
 12 of the 2000s I worked for some magazines,
 13 beauty magazines that you would have bought at
 14 CVS or Walgreens and did content for those
 15 magazines at my studio.
 16 Q And how much of that -- what proportion of
 17 your photographic work involves selling the
 18 pictures to magazines and newspapers?
 19 A Today, none.
 20 Q None?
 21 A Yeah. I'm semi-retired from that kind of
 22 work.
 23 Q From the photo -- from photojournalism, or
 24 what do you mean by that kind of work?
 25 A Well, I don't seek those kind of assignments.

1 The magazine industry has gone down the tubes
 2 so there is very little work there and I've
 3 decided not to waste my time pursuing the
 4 little bit of work that remains. So as I
 5 said, I do documentary work. And I have two
 6 major projects that I expect to take a decade
 7 that I'm working on now that are documentary
 8 in nature.
 9 Q Can you explain these projects?
 10 A If you wish. There are two. One was inspired
 11 by going to a lot of funerals. I'm an old
 12 newspaper guy and a lot of my old friends from
 13 the newspaper days are dying. I realized at
 14 the most recent funeral that I'm the only one
 15 left from that crew that I started out with in
 16 1968 so I can make up any stories I want about
 17 those days and no one can contradict me.
 18 But I started in newspapers when there
 19 were linotype machines setting type with hot
 20 lead and there were guys with green eye shade,
 21 garters on their shirt sleeves who know
 22 everything. They knew more than Google. And
 23 they would -- when you made a mistake it was
 24 not just corrected, you were stood up in
 25 public, humiliated in the newsroom.

1 I'll never forget the day I misspelled
 2 Pittsburgh in a story and two of the editors
 3 were from Pittsburgh. And I've never
 4 misspelled Pittsburgh from that day.

5 The point of all this is there was a
 6 culture and environment in those newsrooms
 7 that doesn't exist today as newspapers are
 8 fading. So my project is traveling around,
 9 photographing and interviewing the people who
 10 worked in that kind of a newsroom and getting
 11 their stories captured on tape and pictures of
 12 them. And those are being produced on a blog
 13 that I've set up where you can actually listen
 14 to the whole interview, see the portrait of
 15 the person and read a few quotes from the
 16 interview.

17 Q Is it accurate to say that that's not going to
 18 involve any nudes?

19 A Yes.
 20 Q Or sexually explicit?
 21 A Right, nothing there. And the same with the
 22 other project. These are not --
 23 Q The funeral and the newsrooms or the two
 24 projects, right?
 25 A No, no, this project is about the people who

1 are dying, trying to get them before they die.
 2 Q Okay.
 3 A The other project is photographers today as a
 4 reaction to -- well, some of them as a
 5 reaction to digital photography. There are
 6 many photographers who are starting to use
 7 antiquated photographic processes like the wet
 8 plate process or platinum plating printing.
 9 And the second project involves -- it's a
 10 similar project -- interviewing, photographing
 11 and putting up on a blog those people where
 12 they can talk about why they use a process
 13 that was invented in the 1850s today where
 14 they have to make all their own materials.
 15 And I'm just getting started on that.

16 I have a blog set up but there is
 17 nothing on it yet. I've done a few interviews
 18 and I'm trying to work on that and this whole
 19 eye surgery thing has thrown my schedule out
 20 of whack.

21 But again, non one is going to be
 22 getting naked for those. It's a different
 23 kind of a project.

24 Q Why have you decided to -- I assume you've
 25 said -- let me rephrase that.

Page 21

1 You have decided to switch the scope
 2 of your work from nudes to these kind of
 3 projects; is that accurate?
 4 MS. BAUMGARDNER: Objection. Go ahead
 5 and answer.
 6 A Okay. Not really.
 7 Q Okay.
 8 A I've been looking for -- well, nudes have
 9 never been everything. They've been a major
 10 thing for ten years, coming up on 11 years
 11 now. And I'm starting to feel like I've kind
 12 of done what I set out to do with that, but
 13 I'm not done with it. It's still something
 14 I'm interested in and I'll probably, you know,
 15 be 90 years old and barely able to lift a
 16 camera and still do nudes because it's
 17 important. It's a significant part of what my
 18 personal vision is about.
 19 But there has always been other things
 20 too. And I -- I discovered "The Figure in
 21 Nature" in 2002, realized it was the thing
 22 that I was put on this planet to do and have
 23 spent ten years, 11 years focused on doing
 24 that.
 25 I've achieved quite a bit and have a

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1 significant body of work in that genre now.
 2 But I've always done other things too. And I
 3 kind of felt like it's time to do some
 4 different things.
 5 I've always done dance photography.
 6 That's an important thing for me. I spend a
 7 lot of time photographing a dance production.
 8 I don't photograph it like basketball. I go
 9 to the rehearsals, I learn the dance and then
 10 I try to make my photographs say something
 11 about the dance. So it's a thoughtful
 12 process.
 13 Q When you say you have things that you still
 14 want to do in nude photography, what is it
 15 that you want to do that is missing from the
 16 work that you've done?
 17 A You're talking about the nudes?
 18 Q Yeah.
 19 A I don't know. That's something that evolves
 20 and I never -- I experiment. I try things. I
 21 wander around in the woods with a model and
 22 look for a place to take a picture. I don't
 23 plan.
 24 Q So you don't have any concrete projects this
 25 year to do nudes?

Page 23

1 A Well, yes.
 2 Q Yes. Okay.
 3 A Yeah. Nothing specific. You know, I have a
 4 model coming into the studio on Thursday to
 5 work on some different lighting techniques
 6 that may lead to something I'll do in the
 7 studio, but I never know. My process is take
 8 pictures and see what happens.
 9 Q Other than that project do you have anything
 10 planned for the rest of the year regarding
 11 nudes?
 12 A Nothing specific. I'll be making a trip to
 13 Philadelphia I understand at some point
 14 beginning of June. I may make that a long
 15 road trip and stop and take some pictures
 16 along the way. There are some people in
 17 Pennsylvania who want to work with me, so
 18 yeah.
 19 Q Other than that nothing comes to mind at this
 20 point?
 21 A Nothing specific at this point. There will be
 22 other things that I'll do as the year moves
 23 along but it tends to be more of a spur of the
 24 moment thing. I'll be doing road trips for
 25 these other projects that will probably take

Page 24

1 me near people who want to work with me, so
 2 that may result in nude shoots as well as the
 3 other things that I'll be doing.
 4 Q So have you identified those people that are
 5 going to be close to the places that you're
 6 going to go?
 7 A No, I haven't.
 8 Q Your non-nude photography, where has it been
 9 published?
 10 A Oh, let's see. Start with the Newark Advocate
 11 in Newark, Ohio; the Athens Messenger in
 12 Athens, Ohio; the Associated Press, I
 13 worked -- you know, I've worked with them.
 14 Let's see. I've had work exhibited in Europe
 15 and, you know, with the one contest you were
 16 published in books in Europe in the '70s.
 17 It's been a long time.
 18 There is many, many places. The
 19 magazines, what were the names of those
 20 magazines? They changed the name all the
 21 time. I can't even remember now. "Beauty
 22 Handbook" I think was one of the names. They
 23 published a bunch of different magazines.
 24 They had a version for the Hispanic audience.
 25 They had just all sorts of different things.

6 (Pages 21 to 24)

1 Then when the market started disappearing they
 2 started firing everybody and folding all those
 3 magazines up and I've lost track of them. But
 4 those are some places. There are many
 5 others.

6 I get published -- well, you asked for
 7 non-nudes but most of the publications over
 8 the past decade have been in places that
 9 publish my nude work.

10 Q So you said that your nude work was your --
 11 what you think is your call in this life; is
 12 that correct?

13 A Yes. As an artist.

14 Q As an artist. Would it be accurate to say
 15 that that has been a really substantial
 16 proportion of your work --

17 A For the past --

18 Q -- in photography?

19 A For the past ten years it's been a
 20 substantial -- it's been the bulk of the work.

21 Q So you would say 80 percent?

22 A Are you talking about during the past ten
 23 years?

24 Q During the past ten years.

25 A Yes, I would say 80 percent would be good.

1 Q Do you sell your nudes?

2 A Yes.

3 Q And how do you sell them?

4 A Through galleries for the most part, or
 5 through various shows that -- juried shows
 6 where you enter the show and if you're
 7 accepted, those prints are available for
 8 sale. And several of those shows also will
 9 have a store where I make smaller prints and
 10 send a quantity of the prints into the store
 11 and sell them out of the store at the event.

12 Q Well, last year when you said that you made
 13 400 and \$500 in photography was that from
 14 nudes; do I understand that correctly?

15 A Yes. It might have been -- I think there was
 16 a 50 buck thing from a newspaper in there.
 17 It's from a dance photograph.

18 Q And if I ask you the year before last year
 19 would the answer be the same, 400 to 500?

20 A Something like that.

21 Q So has it been that much pretty consistently
 22 since you started concentrating in nudes?

23 A It's hard. I think I used to make more than
 24 that before the economy went in the toilet.

25 Q More than a thousand a year would you say?

1 A Rarely. Yeah.

2 Q So around a thousand?

3 A Yeah. It's not been a -- I've never done this
 4 for money.

5 Q I understand.

6 A That's not the motivating factor anyway. It
 7 would be nice but it doesn't happen. I have
 8 hopes that some day there'll be more income
 9 from it.

10 Q And can you tell me the web sites where your
 11 nude work has appeared?

12 A Not off the top of my head. I don't memorize
 13 URLs.

14 Q Any web sites that you can remember right now?

15 A Well, I think we provided some of those,
 16 haven't we? I have a portfolio on Model
 17 Mayhem. I have one on Deviant Art. I rarely
 18 change anything on there. Of course, I have
 19 my own web site.

20 Q Okay.

21 A Davelevingston.com. And that's where I --
 22 most of my work is available on the web. I
 23 know there is other places out there that have
 24 my work and there are places that steal my
 25 work and put it on the web too.

1 Q Can you explain how you get women to pose
 2 naked or do nudes for you?

3 A Yeah. Well, I hesitate to tell this story
 4 because I'm under oath but what I usually --
 5 the answer I usually give to that question is
 6 that if you go hiking in the woods, you know,
 7 they are out there, you just have to know
 8 where to look. It's like hunting mushrooms.
 9 That's not true.

10 MS. BAUMGARDNER: I was going to say, I
 11 think you want to answer the question.

12 A In general most frequently they come to me. I
 13 have a reputation for the work that I do.
 14 Models who are interested in the work that I
 15 do will seek me out and ask to be part of it.
 16 I do look for models on Model Mayhem which is
 17 why I'm on that site.

18 Generally I'll look for a model that is
 19 an experienced nude model, that has examples
 20 of work similar to the kind of work that I
 21 do. Particularly when I'm traveling, if I'm
 22 looking for a model in a location that I'm
 23 going to be visiting I'll look for models in
 24 that location who have a track record of doing
 25 the kind of work that I do and contact them to

1 see if they're interested in working for me.
 2 Q Do the models pay you to photograph them?
 3 A We don't exchange money. I should probably
 4 say I do -- I have several policies about
 5 money with models. They aren't allowed to
 6 spend money in order to work with me, so if
 7 we're working together and there are any
 8 expenses that come up I cover those expenses.

9 And the other thing is I consider my
 10 models to be co-creators of the work that I do
 11 so I share copyright with them. They get all
 12 the pictures and full rights to do anything
 13 they want with the pictures.

14 Q What do you look for in a model?

15 A It might surprise you that physical things are
 16 not significant. I look for a model who is
 17 reasonably attractive, has a reasonably fit
 18 body. And the main thing I'm looking for is
 19 someone who gets what I'm trying to do and
 20 wants to be a part of it. Those are -- I'm
 21 looking for someone that is actually committed
 22 to making art and interested in the nude as
 23 art and likes what it is that I do in that
 24 regard and wants to be part of it. That's
 25 more significant than pretty much anything

1 started concentrating on that?
 2 A How many models? Wow. I don't know.
 3 Q 10,000?
 4 A No.
 5 Q Okay. 5,000?
 6 A No.
 7 Q A thousand.
 8 A No.
 9 Q Less?
 10 A Less.
 11 Q 500?
 12 A I'm sure it's less than 500 but I don't know
 13 how much lower I can go and be confident with
 14 it.
 15 Q Let's say 250?
 16 A It's possible that many.
 17 Q Okay.
 18 A Yeah. I don't keep track of that.
 19 Q It could be less than 250?
 20 A It could be less.
 21 Q And out of those 250, like ten have been
 22 grandmothers?
 23 MS. BAUMGARDNER: Objection.
 24 A I don't know. I really don't know.
 25 Q But it -- has it been more than ten?

1 else.

2 Q Is youth important for a model?

3 A Not significantly, no. I work with models of
 4 all ages as long as they are reasonably fit.

5 Q Okay. Have you ever worked with a model
 6 that's a grandmother?

7 A Yes.

8 Q How many would you say?

9 A I don't know. Several. I have one model that
 10 I've worked with quite a bit who is in her
 11 late 60s.

12 Q Okay. Other than her, anyone else?

13 A There are several in their late 40s, 50s,

14 Q That are grandmothers?

15 A Yeah, I think several of them have grandkids,
 16 yeah.

17 Q Would you say you've worked with ten that are
 18 grandmothers?

19 A Somewhere around there maybe. I can't -- you
 20 know, it's not something I track.

21 Q Right.

22 A I may not know if they are a grandmother or
 23 not.

24 Q And how many models in your nude work would
 25 you say you've worked with since 2002 when you

1 MS. BAUMGARDNER: Objection.
 2 A I don't know. Don't know. Can't answer the
 3 question. I really just don't know.
 4 Q Has it been -- do you recall if they have been
 5 a substantial amount of those 250?
 6 A No.
 7 MS. BAUMGARDNER: Objection.
 8 A I just don't know.
 9 Q Okay. Would it be accurate to say that most
 10 of your models have not been grandmothers?
 11 A Yes.
 12 Q Have most of your models been mothers?
 13 MS. BAUMGARDNER: Objection. You can
 14 go ahead and answer if you know.
 15 A Many. I don't know.
 16 Q Well, more than 50 percent?
 17 A I would say 50 percent might be a good
 18 number. Might be higher than that.
 19 Q Of mothers?
 20 A Yeah.
 21 Q You said you don't -- do you keep records
 22 documenting if they have children, the models?
 23 A No.
 24 Q Do you ask them?
 25 A No. I guess to understand you need to know

1 A Right.
 2 Q Mr. Levingston, have some of the models that
 3 you have photographed nude been college
 4 students in the last ten years?
 5 A Yes.
 6 Q How many have been college students?
 7 A I have no way of knowing. I can't answer that
 8 question.
 9 Q Okay. Would you say that more than ten
 10 percent have been college students?
 11 MS. BAUMGARDNER: Objection.
 12 A I don't know. I really don't know.
 13 Q Can you think of women who have -- you've
 14 photographed that have been college students?
 15 A Yes.
 16 Q Okay. Can you give me their names?
 17 A No.
 18 Q Can you give me their initials?
 19 A Yes. Some of them. Let's see. G. Doesn't
 20 use a last name.
 21 Q And where was she a college student?
 22 A I'm not going to provide that.
 23 Q Name of the university?
 24 A If I think it gets into the privacy of the
 25 model that's not something I'm comfortable

1 Q Okay. So by my calculation it's six?
 2 A That's not all, that's just all I can recall
 3 off the top of my head.
 4 Q There is many more?
 5 A Yes, there is some more.
 6 Q Ten more?
 7 A Probably.
 8 Q 20?
 9 A Maybe.
 10 Q More than -- no more than 50?
 11 A Probably not.
 12 Q Okay. Is it accurate to say that more of your
 13 models have been college students than 50 year
 14 olds --
 15 MS. BAUMGARDNER: Objection.
 16 Q -- of your nude models in the last ten years?
 17 A Yes.
 18 MS. BAUMGARDNER: And again, this is
 19 nude, correct?
 20 MR. BLADUELL: Nude. All nude.
 21 A But not erotic?
 22 Q Well --
 23 A I think we need to make that distinctions.
 24 Q We'll get to that.
 25 Have you recruited some models in

1 talking about.
 2 Q Do you have a real concern that I can find out
 3 her name by you giving me the university?
 4 A I think it is reaching a point where I'm -- I
 5 would be revealing more information than I'm
 6 comfortable about the background and life of
 7 my models, yes.
 8 Q Okay. Well, do you know their date of birth?
 9 A Not off the top of my head.
 10 Q All right. So can you give me another college
 11 student?
 12 A GA. Again, I'm having a hard time -- I'm a
 13 visual person. I can see them but getting
 14 their name to come up is a --
 15 Q You can just tell me when you remember someone
 16 visually, you tell me one, two and then --
 17 A Okay. There is one. Another one.
 18 Q So we have two already?
 19 A Three.
 20 Q We have three.
 21 A Trying to think of some others. Yeah, there
 22 is another one. Another one. Another one. I
 23 can give you initials on a few of those that
 24 I've thought of now. One of them was BL, KD,
 25 C, HH. I don't know.

1 college campuses?
 2 A No.
 3 Q Where have you recruited nude models?
 4 A I don't recruit models.
 5 Q So is my understanding correct that all of
 6 these college students who have appeared in
 7 your nudes have contacted you?
 8 A Or I contacted them through Model Mayhem where
 9 they had modeling portfolios.
 10 Q Okay.
 11 A Or there might have been other model sites as
 12 well as Model Mayhem. There are older sites
 13 that did that.
 14 Q So online, online modeling sites?
 15 A For the most part, yeah.
 16 Q Okay. So you've never reached out to a model
 17 that's college age? Have you reached out to a
 18 model that is college age through Model Mayhem
 19 or any of these other sites?
 20 A Yes.
 21 Q Have some of your models been high school
 22 students?
 23 A Not for nude work.
 24 Q Okay. Have some of your models for nude work
 25 been recent high school students?

1 MS. BAUMGARDNER: Objection.
 2 A Very few. I mean recent, I don't -- if they
 3 are in college they are recent high school
 4 students.
 5 Q That's fair. Have you had models who have
 6 posed nude for your pictures for the last ten
 7 years who have graduated college but have not
 8 entered college -- have graduated high school
 9 but have not entered college yet?
 10 A There have been some.
 11 Q Okay. How many would you say?
 12 A I have no idea.
 13 Q Can you recall anyone specifically?
 14 A I can't even -- no.
 15 Q You cannot recall any?
 16 A No, I can't. That's not something that I
 17 would care about or think about.
 18 Q Why would you not care about it?
 19 A Well, what they are doing with their education
 20 and career is not really something I delve
 21 into to great depth.
 22 MS. BAUMGARDNER: Are you doing okay?
 23 THE WITNESS: Not right this
 24 instance but sometime before too long.
 25 MS. BAUMGARDNER: Let Mr. Bladuell

1 she contacted me. She's a friend. I work
 2 with her whenever I can.
 3 Q Is Kelsey Dylan her real name?
 4 A No.
 5 Q What are the initials of her real name?
 6 A KS.
 7 Q Do you know her birth -- date of birth?
 8 A Not off the top of my head, no.
 9 Q Is she a friend?
 10 A Yes.
 11 Q In the second paragraph, I'm going to read
 12 it. "She said she was going to the west coast
 13 to go to college but wanted to work with me
 14 before she left Ohio. We did a shoot"
 15 ellipses -- "a wonderful shoot that produced a
 16 bunch of keeper photographs. Then she was
 17 gone to school. But we stay in touch and work
 18 together whenever she is back in Ohio. Kelsey
 19 is a great model, beautiful and highly skilled
 20 and as with all my models she's a very nice
 21 person. I love working with her and try to
 22 shoot with her as often as I can."
 23 Mr. Livingston, did I read that
 24 accurately?
 25 A You did.

1 know.
 2 MR. BLADUELL: I'm going to mark as
 3 Exhibit DL4 a document that I took from
 4 Mr. Livingston's web site. I'm going to hand
 5 a copy to counsel as soon as I can find it.
 6 (Defendant's Exhibit DL4
 7 marked for identification.)
 8 Q Mr. Livingston do you recognize that
 9 document?
 10 A Yes.
 11 Q And what is that document?
 12 A It's a print out from my blog.
 13 Q Okay. Could you read the first paragraph?
 14 A "Sometimes I find myself" --
 15 Q For yourself.
 16 A Oh, okay.
 17 Q Sorry.
 18 A Okay. Okay.
 19 Q Can you read the second paragraph to
 20 yourself. It's on the second page.
 21 A Yes.
 22 Q Do you remember this model?
 23 A Oh, yes.
 24 Q What can you tell me about this model?
 25 A She's a wonderful model, very experienced when

1 Q So is it correct that you worked with this
 2 model before she went to college?
 3 A Yes.
 4 Q Do you know what age she was when she went to
 5 college?
 6 A I'd have to look.
 7 Q Do you remember the year that this was -- that
 8 you first did a shoot with her?
 9 A I don't remember. Must have been five years
 10 ago. Something like that.
 11 Q So this would be -- I'm not terribly good at
 12 math either but it's --
 13 A I'm guessing.
 14 Q It's like 2009?
 15 A Probably around there.
 16 Q And that's the first time that you
 17 photographed her?
 18 A Yes.
 19 Q Did those photographs involve nudes?
 20 A Yes.
 21 Q Do you remember what age she was at the time?
 22 A No, I don't.
 23 Q So could she have been 17?
 24 A No.
 25 Q How are you sure about that?

1 A I did check her ID.
 2 Q Okay. Do you have a copy of the ID?
 3 A I believe I do.
 4 MR. BLADUELL: Okay. I'm going to
 5 request, counsel, to identify the ID that was
 6 provided to us of this model Kelsey Dylan and
 7 the associated model release.
 8 Q Mr. Levingston, have there been other models
 9 in Ohio like Kelsey Dylan who you have shot
 10 nude before they go to college?
 11 MS. BAUMGARDNER: Objection.
 12 A Don't know. I can't really answer that.
 13 That's not something I keep track of.
 14 Q Is it possible?
 15 A It's possible.
 16 Q But you don't -- is it fair to assume that
 17 Kelsey Dylan was around the age of 18 at the
 18 time you first shot her nude?
 19 MS. BAUMGARDNER: Objection.
 20 A I don't know. I think she was older.
 21 Q Older. So was she -- you don't know her exact
 22 age?
 23 A I don't know her exact age.
 24 Q But do you recall if she was over 20 or
 25 between 18 and 20?

1 Q When you say accomplished, would that mean
 2 more than five?
 3 MS. BAUMGARDNER: Objection.
 4 A She was highly skilled at -- I have no idea
 5 how many shoots she had done.
 6 Q But you reviewed some of the shoots before you
 7 photographed her?
 8 A I looked at her online portfolio.
 9 Q Is my understanding correct that she contacted
 10 you?
 11 A Yes.
 12 Q You didn't contact her?
 13 A Right.
 14 Q And did she contact you through Model Mayhem?
 15 A I don't remember.
 16 Q Are you still in touch with Kelsey Dylan?
 17 A Yes, I am.
 18 Q Do you still do regular nudes of her?
 19 A Whenever she's around. Whenever she's
 20 available.
 21 Q Is she a full-time model?
 22 A Yes, she is.
 23 Q Does she live in Ohio?
 24 A She travels.
 25 Q But she doesn't permanently live in Ohio?

1 MS. BAUMGARDNER: Objection.
 2 A I don't know.
 3 Q But it's not uncommon for you to photograph
 4 models around that age?
 5 MS. BAUMGARDNER: Objection.
 6 Q Right, nude?
 7 MS. BAUMGARDNER: Objection.
 8 A It's not common.
 9 Q It's not common?
 10 A Right.
 11 Q It's more common that they are older than 20?
 12 A Yes. Kelsey is an exceptional model and I
 13 should mention that she had an extensive nude
 14 portfolio online when she contacted me.
 15 Q Do you know if those pictures were taken
 16 before she was 18?
 17 A I don't know when those pictures were taken.
 18 Q Do you remember how extensive her background
 19 was in nude photography at the time that you
 20 first shot her?
 21 A She was quite accomplished as a nude model.
 22 Q Do you remember how many shoots she had?
 23 A I would have no way of knowing.
 24 Q Do you remember if it was more than ten?
 25 A I would have no way of knowing how many.

1 A Her home is in Ohio but she's seldom there.
 2 Q Were the nude pictures of Kelsey Dylan
 3 published?
 4 MS. BAUMGARDNER: Which nude pictures
 5 are you talking about?
 6 MR. BLADUELL: The first ones that
 7 he took right after she graduated from high
 8 school.
 9 A They've been on my blog.
 10 MS. BAUMGARDNER: Objection to that,
 11 but go ahead.
 12 A Trying to think if they've been in printed
 13 products. They may have been but I'm not
 14 sure.
 15 MR. BLADUELL: Okay. I'm going to
 16 request a sample picture, the nude of Kelsey
 17 Dylan as well for the record.
 18 MS. BAUMGARDNER: And you can.
 19 A You have them right here.
 20 Q Right, I understand that.
 21 MR. BLADUELL: I'm requesting it and
 22 you may object, but I just wanted to note for
 23 the record and we can discuss it later.
 24 MS. BAUMGARDNER: I'm going to object
 25 as to relevance.

1 A Yes.
 2 Q Even if the statutes have been -- even if 2257
 3 has been in place, correct?
 4 A Yes.
 5 Q Has 2257 prevented you from making nudes?
 6 A No.
 7 Q So what, your concern is 2257(a)?
 8 A Primarily.
 9 Q Okay. Has that prevented you from making
 10 nudes?
 11 MS. BAUMGARDNER: Objection.
 12 A Some.
 13 Q Which ones?
 14 A Well, they weren't made so that's an
 15 impossible question to answer.
 16 Q Okay. Since the enactment of 2257 have you
 17 wanted to do nudes that you decided not to do
 18 because of the statutes?
 19 A Yes.
 20 MS. BAUMGARDNER: Just to clarify, you
 21 said 2257.
 22 MR. BLADUELL: (a).
 23 MS. BAUMGARDNER: Okay. (a).
 24 A Yes.
 25 Q Can you tell me which ones?

1 A No.
 2 Q What projects?
 3 A In general I have stayed away from any work
 4 that might be conceived to fall under 2257(a),
 5 so despite an interest in art that would
 6 explore human sexuality I've stayed away from
 7 that subject matter because of this law.
 8 Q But have you had a particular concrete project
 9 that you wanted to do and you said oh, I'm not
 10 going to do it because of 2257(a)?
 11 A I don't work that way so I'd have to say no
 12 concrete projects. Although there were ideas
 13 for projects that were rejected.
 14 Q Rejected by you?
 15 A Yes.
 16 Q When you have these ideas about projects after
 17 2257(a), do you consult an attorney about how
 18 to reasonably comply with the statutes and
 19 make your projects?
 20 A No.
 21 Q Do you take any concrete steps to see how you
 22 could comply with the statute and still make
 23 your project?
 24 A I don't believe that would be possible or I
 25 would do the project.

1 Q What do you mean, that it would not be
 2 possible?
 3 A If I'm doing a project that -- well, if I'm
 4 thinking about a project that I feel would
 5 fall under 2257(a) then I don't do it. If it
 6 wouldn't fall under 2257(a) then I would
 7 proceed with the project.
 8 Q Okay. Why would you not do it?
 9 A Because of the legal problems that 2257(a),
 10 the burden that it imposes on me, my inability
 11 to comply with the statute if I did that.
 12 Q What are the concrete burdens, what are the
 13 concrete impediments?
 14 A I'm congenially unable to keep records, as you
 15 have seen today. I would be very concerned
 16 that whatever efforts I might make at
 17 recordkeeping would not be adequate to satisfy
 18 the statute if I were to try that.
 19 Q Is it your view that any law that requires
 20 someone to keep records would be
 21 unconstitutional?
 22 MS. BAUMGARDNER: Objection.
 23 A No.
 24 Q So why is this one in particular, the record
 25 -- why is the recordkeeping unconstitutional?

1 A The recordkeeping seems to me to be so complex
 2 that I could not achieve it.
 3 Q What is your understanding of the
 4 recordkeeping requirement?
 5 A It's a limited understanding but there seems
 6 to be a bunch of cross indexing required, and
 7 I don't know -- I don't even -- I can't even
 8 comprehend how to do that.
 9 Q Have you read the statute to understand the
 10 recordkeeping requirements?
 11 A I've read writing about the statute.
 12 Q You haven't actually read the statutes
 13 themselves, correct?
 14 A I don't know. I've read portions of it.
 15 Q Do you feel that if you read the statute that
 16 might help you understand what the
 17 requirements are?
 18 A No. I've read an exposition on the statute
 19 that was written in layman's terms that I
 20 couldn't understand.
 21 Q So you don't think that you would -- you
 22 haven't read the statute, correct?
 23 A I've read parts of it.
 24 MS. BAUMGARDNER: Objection.
 25 Q You read parts of the statute itself?

1 A Yes.
 2 Q You did not understand some of those parts,
 3 correct?
 4 A Yes.
 5 Q Which parts do you not understand?
 6 MS. BAUMGARDNER: Objection.
 7 A The recordkeeping requirements.
 8 MS. BAUMGARDNER: I mean, in fairness,
 9 if you want to show him the statute. I don't
 10 think it's fair to ask him questions when he
 11 doesn't have it in front of him.
 12 MR. BLADUELL: Well, he said that
 13 he's read it.
 14 A Read parts of it.
 15 MR. BLADUELL: I'm asking him his
 16 recollection.
 17 A And that was a while back. Frankly, in
 18 reading it I was so angry that it's hard to
 19 remember.
 20 Q So other than reading parts of it and reading
 21 articles on it have you taken any other steps
 22 to get better acquainted with this statute?
 23 MS. BAUMGARDNER: Objection.
 24 A Actually I became aware of the statute because
 25 a friend of mine who is a photographer and a

1 not read it before?
 2 A I don't believe so.
 3 Q I represent to you that this is a regulation
 4 passed by the Department of Justice in
 5 accordance with the Statute 2257, 2257(a).
 6 I'm going to direct your attention to Letter O
 7 in the third page.
 8 Do you see that it says simulated
 9 sexually explicit conduct means?
 10 A Yes.
 11 Q Can you just read it for yourself for a couple
 12 of seconds?
 13 A Okay.
 14 Q Do you understand it?
 15 A It seems clear as mud to me.
 16 Q What don't you understand?
 17 A I don't -- I do not understand it. I don't
 18 know how much more than that I can say.
 19 Q Well, what --
 20 A It seems contradictory. Internally
 21 contradictory to me.
 22 Q What does it -- why is it internally
 23 contradictory?
 24 A The last sentence seems to contradict the
 25 first sentence.

1 retired lawyer wrote a book about the impact
 2 on the statute.
 3 Q Who is this friend?
 4 A Stephen Haynes.
 5 Q And what was the book?
 6 A I can't remember the title but it's -- I think
 7 2257 is in the title.
 8 Q That's how you became aware?
 9 A Yes, he asked me to edit the book for him and
 10 I was so angry when I finished reading his
 11 account of the law that I was moved to try to
 12 do something about this law.
 13 Q I'm going to mark another exhibit, I think
 14 we're at 7.
 15 (Defendant's Exhibit DL7
 16 marked for identification.)
 17 MR. BLADUELL: I'm handing a copy to
 18 counsel of U.S.C. -- I'm sorry, this is 28 CFR
 19 75.1.
 20 I'm handing a copy of the exhibit to
 21 Mr. Livingston as well.
 22 Q Mr. Livingston, have you read this document
 23 before?
 24 A I don't recognize it.
 25 Q Okay. So is it -- so the answer is you have

1 Q "It does not mean not sexually explicit
 2 conduct that is merely suggested."
 3 A It seems like the first sentence describes
 4 something that's suggested. But I'm no
 5 lawyer. I'm not qualified to analyze this.
 6 That's the problem.
 7 Q Have you consulted an attorney about this
 8 provision?
 9 A No.
 10 Q Even before today you said you haven't read
 11 it, correct?
 12 A I have not seen this particular document.
 13 Q Okay. I'm going to mark some of
 14 Mr. Livingston's work as exhibits and we can
 15 talk about them.
 16 I'm marking three exhibits, DL8, DL9
 17 and DL10.
 18 (Defendant's Exhibit DL8 through DL10
 19 marked for identification.)
 20 Q I'm going to hand them to Mr. Livingston. I'm
 21 going to find a copy for counsel --
 22 MS. BAUMGARDNER: Thank you.
 23 Q -- and a copy for myself and then we can talk
 24 about the pictures.
 25 Mr. Livingston, could you describe each

1 of these exhibits?
 2 MS. BAUMGARDNER: Objection.
 3 A Well, they are --
 4 Q You don't have to say much about them, just
 5 describe them for the record.
 6 A They are all photographs that were taken last
 7 summer on the coast of Maine.
 8 Q What's in the photographs?
 9 A The coast of Maine and nude models.
 10 Q Are these three exhibits, 8, 9 and 10,
 11 representative of your work involving nude
 12 models?
 13 A Yes.
 14 Q How many pictures like these would you say
 15 you've produced in the last ten years?
 16 A Probably hundreds of thousands.
 17 Q Okay. Around the ballpark of 200,000?
 18 A I don't know.
 19 Q Or more than that?
 20 A I don't -- I really don't know. Thousands and
 21 thousands. Hundreds of thousand. That's as
 22 good as I can do.
 23 Q But if we can try to get a reasonable estimate
 24 of the thousands, is it more than 500,000 or
 25 less than 500,000?

1 Q Okay. So let's take five million pictures as
 2 a possible estimate.
 3 MS. BAUMGARDNER: Objection.
 4 Q Is there any way you can know exactly?
 5 A No. I don't have the records to know.
 6 Q But the figure five million, it's not -- does
 7 that sound absurd?
 8 A Not absurd.
 9 Q Now, in these three pictures in Exhibits DL8,
 10 9 and 10, the women are not touching their
 11 genitals, correct?
 12 A That is correct.
 13 Q But you can see some of the genital area of
 14 the women, correct?
 15 MS. BAUMGARDNER: Objection.
 16 A No, you can't.
 17 Q Can you see pubic hair?
 18 A Yes.
 19 Q So from the pictures we can see pubic hair but
 20 you would say that you cannot see the genital
 21 area?
 22 A Yes.
 23 Q And in most of your pictures that would be
 24 consistent, that you could see the pubic hair
 25 but not the genital areas in most of your nude

1 MS. BAUMGARDNER: Objection.
 2 A I don't know. I don't count.
 3 Q So it could be either?
 4 A Yeah.
 5 Q Okay. It could be 100,000 -- or I'm sorry,
 6 it's not more than a million?
 7 A I don't know. I shoot lots. I shoot -- at a
 8 shoot like this I could go look and tell you
 9 how many pictures I took that day but I'm sure
 10 it's more than a thousand in that day.
 11 Q For each shoot?
 12 A Well over a thousand is often the case.
 13 Q And how many shoots would you say you've --
 14 A There is no pattern.
 15 Q Okay. So it's possible that it could be
 16 millions of pictures?
 17 MS. BAUMGARDNER: Objection.
 18 A I don't know.
 19 Q It's not ten million pictures?
 20 A I don't know. Probably not.
 21 Q Okay. All right. That's progress. It's not
 22 -- is it five million pictures?
 23 A I don't know.
 24 Q Is it possible?
 25 A It might be possible.

1 pictures?
 2 MS. BAUMGARDNER: Objection.
 3 A Most. Not all.
 4 Q Okay. So in some of your nude pictures you
 5 can see the full genital area?
 6 A Yes.
 7 Q And those would be you would consider sexually
 8 explicit?
 9 A No.
 10 Q No. Okay. Why would you not consider those
 11 sexually explicit?
 12 A I don't think there is anything -- well, I
 13 think the entire body is beautiful and that
 14 there is no particular area of the body that
 15 is more or less erotic than another area.
 16 When I compose a photograph I'm looking at the
 17 overall composition and the look of the
 18 photograph, I'm not concerned about what parts
 19 of the model's body are showing or not
 20 showing. Not something that goes into the
 21 thinking when I produce photographs.
 22 Q Okay. Do you alter the pictures in any way,
 23 photo shop the woman's body?
 24 A I do very limited photo shop work. I don't
 25 change the bodies of the models.

1 Q So what limited photo shop work have you done
2 on the models?
3 A The same kind of work on the photos that you
4 would do in a chemical darkroom, adjust for
5 exposure and cropping and things like that.
6 But no, I don't go in and change the bodies of
7 the models.
8 Q You don't alter their appearance?
9 A No. I might take a zit out or I might
10 occasionally take a zit or something like that
11 off a model but not much more than that.
12 Q Okay. Do you recognize who these models are
13 in these pictures?
14 A Yes, I do.
15 Q Are all of them your friends?
16 A Yes.
17 Q Do you know their ages at the time that they
18 were shot?
19 A Not exactly.
20 Q Okay. Will you be able to give us a good
21 estimate of their ages?
22 A I can tell you.
23 Q Let's look at DL8 first, which is the one that
24 you have in front.
25 A Okay. They are in their mid to late 20s, with

1 Q Lake Superior. What state? I'm sorry.
2 A Minnesota.
3 Q Minnesota?
4 A Yeah. I'm not -- I think -- I think that's
5 where this was taken.
6 Q And do you know the age?
7 A Mid 20s.
8 Q And let's go to the next one, DL10, please.
9 Do you recognize her?
10 A Yes.
11 Q Do you know the age at the time that they were
12 shot?
13 A She's in her mid 20s.
14 Q By looking at the picture you cannot give me
15 an accurate estimate of the age -- a more
16 accurate estimate of the age?
17 MS. BAUMGARDNER: Objection. More
18 accurate than what?
19 MR. BLADUELL: Than mid 20s.
20 A That's the best. I don't remember their birth
21 dates.
22 Q Okay. Just from looking at the picture not
23 from your recollection of them.
24 A That's hard to separate. I know this woman so
25 I know how old she is or approximately how old

1 the exception of one model who is in her 30s.
2 Q And who is the model that is in their 30s?
3 A The second from the top.
4 Q Okay. And you can tell that from your
5 recollection of the models, right?
6 A Yeah.
7 Q Not by looking at the picture?
8 A Right.
9 Q And let's go to the next one. Let me see
10 which one you have in front of you. DL9.
11 This is one single woman on top of a rock
12 naked, correct?
13 A Yes.
14 Q Do you know her name?
15 A Yes, I do.
16 Q And do you recognize her?
17 A Yes.
18 Q And how old was she when she was shot?
19 A I'm trying to -- I think I misspoke before. I
20 think this one was not taken on the coast of
21 Maine.
22 Q Okay.
23 A I'm not sure. I'd have to go look. It could
24 have been taken on the north shore of Lake
25 Superior.

1 she is, so I don't know how I can remove that
2 information and analyze the picture,
3 especially a very poor quality one like that.
4 Q Sorry. But if you look at a picture of a nude
5 woman will you be able to tell the exact age
6 of that woman?
7 MS. BAUMGARDNER: Objection.
8 A No.
9 Q Do you consider that these images are subject
10 to Section 2257?
11 A No.
12 Q And why are they not subject to 2257?
13 A There is nothing -- no sexual activity.
14 Q No sexual intercourse you mean?
15 A Right.
16 MS. BAUMGARDNER: Objection.
17 A Well, sexual activity.
18 Q Okay.
19 A I don't understand the statutes that well but
20 there is nothing sexual going on in these
21 pictures.
22 Q What do you mean by sexual activity?
23 A There are forms of sexual activity other than
24 intercourse.
25 Q Yes. Is masturbation one of them?

	Page 101		Page 103
1	A Yes.	1	A A lot fewer.
2	Q Do you consider that these pictures are lascivious exhibition of genitals or pubic area?	2	MR. BLADUELL: I'm going to mark another exhibit, Exhibit DL11.
3		3	(Defendant's Exhibit DL11
4		4	marked for identification.)
5	A No. I wouldn't have taken them if they -- if I felt that.	5	MR. BLADUELL: I'm handing a copy to
6	Q I'm sorry. You said that you -- what year did	6	the witness. I handed a copy to counsel.
7	you take them?	7	Q This is an image titled "You can put an eye
8	A Two of these were taken this past summer in	8	out," correct.
9	2012.	9	A Yes.
10	Q Which ones, DL?	10	Q And this was exhibited in the juried show in
11	A 10 and 8.	11	Detroit in February of 2009; is that correct?
12	Q This past summer meaning 2012?	12	A Yes. Well, I'm not sure of the year but that
13	A Right. I'd have to look to know the -- when I	13	sounds about right.
14	made that trip to the north shore of Lake	14	Q And you produced this image in August of 2008?
15	Superior but it was within the last three	15	A Sounds right. Again, I'd have to check to be
16	years.	16	sure of the date.
17	Q Is that DL8?	17	Q Sounds about right?
18	A DL9.	18	A Sounds about right.
19	Q DL9 is the one that you had done you're not	19	Q Where was it published?
20	sure?	20	A It was published in a book. I can't
21	A Yeah. Three years maybe ago. I can't -- I	21	remember. Did I give you a title of that
22	can't remember.	22	book? I can't remember the name of the book.
23	Q So it's older than the other pictures?	23	Q Is it "The Figure in Nature"?
24	A Yes.	24	A No. It was a collection of erotic
	Page 102		Page 104
1	Q Do you keep 2257 records --	1	photography.
2	A No, I do not.	2	Q Not all produced by you?
3	Q -- for these pictures? Do you consider that	3	A No. It was -- it was a juried exhibit and
4	these images are subject to 2257(a)?	4	book.
5	A No.	5	Q Did you put this image on your web site?
6	Q Why don't you consider them subject to	6	A I had it on my web site at one time.
7	2257(a)?	7	Q The davelevingston.com?
8	MS. BAUMGARDNER: Objection.	8	A No, it was a different URL at the time.
9	A Well, they don't show any simulated sexual	9	Q Do you remember that URL?
10	activity.	10	A It was on blog spot, exposed from the shadows
11	Q So the statutes have -- 2257, 2257(a) have not	11	dot blog spot dot com or something like that.
12	prevented you from taking these pictures?	12	Q Is that now davelevingston.com?
13	A No, I wouldn't have taken them if I felt they	13	A It's been migrated over to that, yeah.
14	were constrained by the statutes.	14	Q At some point you removed this picture from
15	Q Okay. Now, you have produced pictures that	15	your web site?
16	you think are covered by 2257(a), correct?	16	A Yes.
17	A Yes.	17	Q This was around the time that 2257(a) was
18	Q But the pictures that you have created that	18	enacted?
19	you think are covered by 2257(a) have been	19	A Yes.
20	less than the ones that you think are not	20	Q What was your understanding about what 2257
21	covered by 2257(a), correct?	21	required you to do with respect to the
22	A I mean I created fewer.	22	picture?
23	Q Fewer?	23	A Well, I was concerned that -- there was
24	A Yes.	24	expressed to me that this would be interpreted
25	Q A lot fewer?	25	as sadomasochistic abuse.

<p style="text-align: center;">Page 105</p> <p>1 Q And who said that to you? 2 MS. BAUMGARDNER: Objection. I believe 3 that would be privileged, so I'm going to 4 instruct him not to answer.</p> <p>5 MR. BLADUELL: Okay. Let's get 6 clear for the record, the question was who 7 told you that this could be subject to the 8 statutes and counsel has said --</p> <p>9 MS. BAUMGARDNER: Okay. Actually I 10 withdraw that objection. You can go ahead and 11 answer that.</p> <p>12 A Counsel told me that.</p> <p>13 Q Okay. Which counsel?</p> <p>14 A This lady right here. (Indicating.)</p> <p>15 Q And did she tell you that at -- that would be 16 Ms. Baumgardner, correct?</p> <p>17 A Yes.</p> <p>18 Q Did she tell you that in August at the time 19 the statute was enacted?</p> <p>20 A I don't know when she told me that.</p> <p>21 Q Okay. But was it around the time that you -- 22 did you rely on that advice to take it out?</p> <p>23 A Yes.</p> <p>24 Q Off your web site?</p> <p>25 A Yes, I did.</p>	<p style="text-align: center;">Page 107</p> <p>1 A Which question? 2 MS. BAUMGARDNER: I'm instructing you 3 not to answer the question.</p> <p>4 MR. BLADUELL: Which one, the one 5 about --</p> <p>6 MS. BAUMGARDNER: Well, I guess it was 7 a two-part question. Why don't you divide it 8 up.</p> <p>9 Q Okay. You came to an understanding that this 10 picture was subject to 2257(a)?</p> <p>11 A I don't think I would say that.</p> <p>12 Q Okay. So you relied on what other people told 13 you to make the -- to remove this picture?</p> <p>14 You based -- I'm sorry, let me rephrase that. 15 You based your removal of the picture 16 from your web site from what other people told 17 you, correct?</p> <p>18 A Yes.</p> <p>19 Q Not from your own reading of the statute and 20 determination that this was subject to the 21 statute?</p> <p>22 MS. BAUMGARDNER: Objection. Go ahead, 23 you can answer that.</p> <p>24 A Not from my own understanding.</p> <p>25 Q You said that they told you it could be</p>
<p style="text-align: center;">Page 106</p> <p>1 Q Did you read the statute before taking it out?</p> <p>2 A I had read my friend's book at that time so I 3 was going from what he had written in his book 4 which included quotes from the statute.</p> <p>5 Q And you came to an understanding from 6 Ms. Baumgardner's advice and from your 7 friend's advice that this would be subject to 8 the statute?</p> <p>9 MS. BAUMGARDNER: Objection. I'm going 10 to instruct him not to answer that. I think 11 you're encroaching on attorney-client 12 privileged communication I made to him.</p> <p>13 MR. BLADUELL: I'm asking about his 14 understanding, not about what you specifically 15 told him.</p> <p>16 MS. BAUMGARDNER: Based on my advice, 17 so implicit in that is what -- would reveal 18 what my advice to him was.</p> <p>19 You can answer the question with regard 20 to your friend's book but any conversation or 21 communications we've had -- I've let you ask 22 him, he can identify when he recalled it and 23 that we had it, but any further subject matter 24 regarding our communication is privileged.</p> <p>25 Q You can answer the question.</p>	<p style="text-align: center;">Page 108</p> <p>1 interpreted as sadistic or masochistic 2 behavior, correct? That's something you said 3 already; is that accurate?</p> <p>4 A Yes.</p> <p>5 Q What does sadistic mean to you?</p> <p>6 A It means inflicting pain.</p> <p>7 Q And what does masochistic mean to you?</p> <p>8 A Receiving pain I guess.</p> <p>9 Q Does it look from the picture that the model 10 is in pain?</p> <p>11 A No.</p> <p>12 Q Do you believe that the picture is sadistic 13 behavior, according to your definition?</p> <p>14 MS. BAUMGARDNER: Objection. We're 15 talking about 2257(a) and you're leaving out 16 an important word of simulated.</p> <p>17 MR. BLADUELL: Well, I'm asking him.</p> <p>18 MS. BAUMGARDNER: Well, you have to be 19 fair.</p> <p>20 MR. BLADUELL: You can object to the 21 question.</p> <p>22 MS. BAUMGARDNER: Well, I'm objecting 23 because I don't think it's a fair question.</p> <p>24 MR. BLADUELL: But, counsel, you can 25 object to the question but speaking</p>

	Page 109	Page 111
1	objections, you know, they are not allowed	1 have you taken this year?
2	under the rules.	2 Let's see. I was in Florida in February. I
3	Q Go ahead please, sir.	3 was in --
4	A Could you restate the question, please?	4 Q For how long?
5	Q Do you believe this picture depicts sadistic	5 A For a week. In South Carolina for a week.
6	behavior?	6 Q When, in February?
7	A No.	7 A February, March. I'm trying to think where
8	Q And were you concerned that you could not	8 else have I been.
9	comply with the requirements of the statute	9 Q And is this travel connected to photography?
10	2257(a) as to this picture and that's the	10 A Sometimes.
11	reason that you removed it?	11 Q But not necessarily?
12	A Yes.	12 A Not necessarily.
13	Q And why could you not comply with the statutes	13 Q Some of this travel would be for vacation --
14	as regards to this picture?	14 A Vacation.
15	A I do not and will not maintain 2257 records.	15 Q -- purposes? Okay. So you can go on with
16	Period.	16 other travels during this year.
17	Q And that's why?	17 A I'd have to look at my calendar. I travel
18	A I'm not willing to be subject to warrantless	18 frequently.
19	searches. I'm not able to be available 20	19 Q Okay. Let's say last year, 2012.
20	hours a week to allow those searches, and I	20 A You want me to go through everywhere I went
21	don't believe I could keep records in the	21 last year?
22	manner that the statute requires.	22 Q Yes. If you remember.
23	Q But you do keep model releases for other	23 A I can't from memory.
24	models who have appeared in nude pictures,	24 Q You don't remember. I remember.
25	correct?	25 A I was in Maine for an extended week. I've
	Page 110	Page 112
1	A Yes.	1 been to Vermont several times. We have a 98
2	Q And it would not be burdensome for you to keep	2 year old mother-in-law that is in a nursing
3	a model release for this model, correct?	3 home in Vermont. We go up there every other
4	MS. BAUMGARDNER: Objection.	4 month or so. I'm trying to think where else I
5	Q Would it be burdensome to keep a model release	5 went in the last year. I do this a lot, and
6	for this model?	6 without looking at my calendar I can't really
7	A No.	7 answer the question.
8	Q Would it be burdensome to keep a photo of her	8 Q Do you remember now for work where you
9	ID?	9 traveled last year?
10	A No.	10 A Well, Maine was the main trip last year.
11	Q It would be burdensome to be available 20	11 Q And this was in what month?
12	hours a week for the inspections?	12 A I think it was July.
13	A Certainly. Yes.	13 Q July of 2012?
14	Q And that is because -- and why would that be	14 A Right.
15	burdensome?	15 Q And how long were you there?
16	A I go places. I'm not home 20 hours a week.	16 A Over a week.
17	Q So how often do you travel?	17 Q Two weeks?
18	A Frequently.	18 A Well, I don't think it was quite two weeks.
19	Q Do you travel every week?	19 Q A week and a half?
20	A No.	20 A Yeah. I drive on these trips so there is
21	Q Do you travel every month?	21 travel time.
22	A Pretty much, yes.	22 Q Any other work related to photography that you
23	Q And where do you travel?	23 remember from last year?
24	A Anywhere I want to go.	24 A I'm sure there was some but I can't remember.
25	Q Okay. Let's talk about this year. What trips	25 Q Probably one more?

		Page 113	Page 115		
1	A	Several more.	1	Q	Are these photographs nude?
2	Q	Several, like five more?	2	A	Yes.
3	A	Maybe at the most.	3	Q	Would these photographs resemble Exhibits DL8, DL9 and DL10?
4	Q	Where are the places?	4	A	Yes.
5	A	I can't remember. I really -- I'd have to look at my calendar. I do this all the time.	5	Q	Do you have sexually explicit material that you wanted to exhibit in The Dirty Show that you didn't?
6	Q	So do you keep a calendar of your travels for last year?	6	A	Not this year.
7	A	Well, I keep a personal calendar that often has notes that would help me remember where I was when.	7	Q	Okay. Last year?
8	MR. BLADUELL:	I'm going to request production of that calendar just to -- just note the answer to my question about the travels that you've taken during the last year. I believe they are relevant to us.	8	A	No. I haven't been doing anything that would fall under 2257(a) since it took affect.
9	MS. BAUMGARDNER:	You make the request to me.	9	Q	Now, besides this picture, DL11, you have produced other depictions that you think -- you would consider could be subject to the statutes, to 2257(a), correct?
10	MR. BLADUELL:	Right. I'll make the request to counsel.	10	A	Yes.
11	Q	This photograph in DL11, Mr. Livingston, was exhibited in the Detroit Dirty Show. Did I get that correct?	11	MR. BLADUELL:	I'm going to mark as Exhibit DL12 a list of photographs, or it's a list -- it's a list of birth dates and other dates. I'm providing also a copy to counsel.
12	A	Right. That's close to correct. Yeah.	12	(Defendant's Exhibit DL12 marked for identification.)	
13	Q	Does it have a different name?	13	Q	I provided the exhibit to Mr. Livingston. Now, do you recognize this list,
		Page 114	Page 116		
1	A	It's just Dirty Show. The Dirty Show.	1	Q	Mr. Livingston?
2	Q	That takes place in Detroit?	2	A	Yes, I do.
3	A	That takes place in Detroit.	3	Q	And could you describe what it is?
4	Q	Is this something that's done every year?	4	A	It's a list of basically models with their date of birth and photos in which they appear but would have fallen under 2257(a) had they been produced after that.
5	A	Sometimes twice a year.	5	Q	When did you compile this list?
6	Q	And how often do you go to the show?	6	A	A week or so ago.
7	A	I try to go every year. I don't always make it.	7	Q	Now, the list identifies the date of birth for 18 models; is that correct?
8	Q	Okay. Did you go there this year?	8	A	I think that's right. Well, there is only 17 here. There is the eighteenth one, yes.
9	A	Yes, I did.	9	Q	If you look at number two on the list of DL12.
10	Q	And when was that?	10	A	Yes.
11	A	In February.	11	Q	3-16-09 is the date of the shoot, correct?
12	Q	Okay.	12	A	Yes.
13	A	That's one of the trips.	13	Q	And 50 pictures were the total amount of pictures taken in that photo shot?
14	Q	I'm sorry?	14	A	No.
15	A	That's one of the trips.	15	Q	Okay. What would 50 photos mean?
16	Q	One of the trips. Okay. Making progress.	16	A	That means that out of that shoot there were 50 that, looking at them now I felt could be considered to be under the statute. And
17	MR. BLADUELL:	Did you exhibit work at The Dirty Show this year?	17		
18	A	Yes, I did.	18		
19	Q	And what did you exhibit?	19		
20	A	I think I had three photographs in the main show.	20		
21	Q	And are these photographs sexually explicit?	21		
22	A	No.	22		

1 that's just my conservative opinion.
 2 Q Okay. Would that also be the case for all the
 3 other ones?
 4 A It's either the number of pictures in the
 5 shoot that I think might fall under the
 6 statute or the total number of pictures taken
 7 in the shoot if the majority of the pictures
 8 or all the pictures fell into that category.
 9 Q Now, when we go to Florida, 2-09, do you see
 10 that?
 11 A Yes.
 12 Q What does that mean?
 13 A That means the pictures were taken in February
 14 of '09 in Florida. That's how they are filed
 15 in my computer. As I mentioned earlier,
 16 sometimes they are filed by the location.
 17 Q And what are 491 to 534?
 18 A Those are the file numbers of the photos that
 19 I considered might fall under the statute.
 20 Q So is it accurate to say that for every shoot
 21 that you take you have a file number for that?
 22 A Well, those are the numbers that the camera
 23 assigns to each individual picture as it's
 24 taken.
 25 Q Okay. And are those numbers recorded in the

1 pictures that you keep?
 2 A Yes.
 3 Q So the number of pictures would be, you know,
 4 if we subtract 534 from 491, that would be the
 5 number of pictures --
 6 A Yes.
 7 Q -- that you think would be sexually explicit?
 8 A No. Simulated.
 9 Q Simulated. I'm sorry. Simulated.
 10 Now, within the 2005, 2009 framework
 11 how many models have you photographed nude?
 12 A I can't say.
 13 Q Okay.
 14 A A lot.
 15 Q It's been a lot more than 18?
 16 A Yes.
 17 Q 100, is that fair?
 18 A I don't know if there were a hundred models
 19 but there were certainly more than 100 photo
 20 shoots.
 21 Q So not 100 models, but 50 models?
 22 A It's hard for me -- I can't guess at that. I
 23 work with the same models over and over
 24 again. When I have a good model I photograph
 25 her regularly. So I might have 20 shoots with

1 one model in that time period.
 2 Q Okay. But if we can try to get around a
 3 number of models in this time period --
 4 MS. BAUMGARDNER: Objection.
 5 Q -- would that be 50 or lower than 50?
 6 A I can't even guess. I don't know.
 7 Q Is there a way for you to find out?
 8 A I would have to go through the files for that
 9 period, which took me four days to compile
 10 this list, and I'm not interested in doing
 11 that again.
 12 Q Well, if you don't have a good recollection is
 13 it your opinion now that you would not be able
 14 to tell me an accurate number?
 15 A That's right.
 16 Q But looking at the list, would that be able --
 17 you would be able to provide a number?
 18 MS. BAUMGARDNER: Objection.
 19 Q Looking at your files you would be able to
 20 provide a number?
 21 A It's possible.
 22 Q Okay.
 23 MR. BLADUELL: I'm going to have to
 24 request, counsel, the number of models during
 25 this time period.

1 MS. BAUMGARDNER: I'm going to object
 2 to that request, but you can make it. It's
 3 completely irrelevant.
 4 MR. BLADUELL: I disagree on that.
 5 Q But this list captures all of your sexually
 6 explicit material from 2005 through 2009,
 7 simulated?
 8 A Simulated.
 9 Q Okay. You didn't produce sexually explicit --
 10 actual sexually explicit material?
 11 A No, never have.
 12 Q Now, how did you determine that these were the
 13 only models appearing in simulated sexually
 14 explicit material from 2005 to 2009?
 15 A I looked at every fricking picture. That's
 16 why it took four days.
 17 Q So, I mean, you've done this -- you know,
 18 you've done this recently, within the past
 19 week, right?
 20 A What was it? A week and a half ago, something
 21 like that.
 22 Q And you --
 23 A It took a big chunk out of my time in recent
 24 time.
 25 Q And do you remember how many models there

	Page 121		Page 123
1	were --	1	determine the date of birth?
2	A I didn't count.	2	A The model release.
3	Q -- during the time period? Okay.	3	Q Through the model release. Okay. And that's
4	A I was only looking for models that would fit	4	something that the model's report themselves,
5	this category.	5	right?
6	Q Okay.	6	A Yes.
7	A Or shoots that would fit this category.	7	Q And that's the only one that you say you
8	Q You don't segregate your photographs by	8	couldn't find the ID?
9	categories of simulated sexually explicit and	9	A Right.
10	nude?	10	Q For all the other ones you could find the ID?
11	A No.	11	A I think, if I remember correctly that's right.
12	Q And you said that you invested four days	12	MR. BLADUELL: Okay. Counsel, we
13	looking at this?	13	don't have the IDs for the ones 11 in this
14	A Yes.	14	list, 12, 14, 16 and 17.
15	Q Four full days?	15	MS. BAUMGARDNER: Well, as I recall
16	A Well --	16	before the deposition began I told you I was
17	Q A couple of hours every day?	17	going to give you a package of discovery. I
18	A No, major -- the entire working time of four	18	believe that will be included in that package.
19	days.	19	MR. BLADUELL: Well, for the record,
20	Q So eight hours?	20	I just want to state that we have not received
21	A Well, I'm not that hard a worker. I don't	21	11, 12, 14, 16 and 17, so I'm going to check
22	think anybody works that hard. I was -- I got	22	in that packet that counsel is going to
23	up in the morning, I went to the studio. I	23	provide me. If they are not there I would
24	spent the day going through these files for	24	request production of them at a later time.
25	four days. I went home at the end.	25	Q Now, if we go to your discovery responses,
	Page 122		Page 124
1	Q Approximately five hours a day?	1	this DL -- maybe not. Let's see. Do I have
2	A Well, I was at the studio close to eight hours	2	the second one? No, I don't think you do.
3	each day, but, you know, we do go to the	3	Mark it as an exhibit.
4	bathroom now and then.	4	A Is this a good spot for a break?
5	Q And do you look at -- were these pictures in	5	Q Sure. You want to take five minutes.
6	your computer?	6	(Short recess.)
7	A Yes.	7	(Defendant's Exhibit DL13
8	Q Did you go through the IDs that you had of	8	marked for identification.)
9	these models?	9	Q We're going to mark DL13 Plaintiff Dave
10	A Yes, I did, to come up with the dates of birth	10	Levingston's answer to the defendant's second
11	and all of that.	11	set of interrogatories. I'm handing a copy to
12	Q And so did you use the IDs for that or the	12	Mr. Levingston.
13	model releases?	13	If we go to Interrogatory No. 15,
14	A Both.	14	Mr. Levingston, I'll tell you the page in a
15	Q Both. Were there pictures depicting simulated	15	moment.
16	sexually explicit material for which you	16	A I found it.
17	couldn't find the IDs?	17	Q It's page I guess 4. Can you please just read
18	A Yes, I think there was one.	18	it to yourself and read the answer?
19	Q And which one? Is it listed here?	19	A Okay.
20	A No. I don't remember which one.	20	Q The interrogatory asks for you to identify
21	Q So there could be another -- a nineteenth?	21	individuals appearing in sexually explicit
22	A No.	22	depictions, correct?
23	Q It's here?	23	A Yes.
24	A Yes.	24	Q And you provided this information on the list
25	Q And for that particular one, how did you	25	marked as Exhibit DL12?

1 A Okay.
 2 Q Is that correct?
 3 A Yes.
 4 MS. BAUMGARDNER: For --
 5 MR. BLADUELL: Simulated --
 6 MS. BAUMGARDNER: And for the time
 7 period specified.
 8 MR. BLADUELL: For 2005 through
 9 2009, correct.
 10 A Yes.
 11 Q But you said in your Interrogatory 15, "I have
 12 not maintained records or any system that
 13 would allow me to identify which of the photos
 14 I took or which of the photo shoots I
 15 conducted would yield the information asked
 16 for by this interrogatory," correct?
 17 A Yes, since 1978, which is what you asked for.
 18 Q But at that time were you able to figure out
 19 the answer from 2005 to 2009?
 20 A Yes.
 21 Q And why didn't you do that at that time?
 22 A Because that's not what you asked for.
 23 Q Well, I asked for -- we asked for since '78?
 24 A Right.
 25 Q So --

1 created this. I mean, we had to come to an
 2 agreement on production and answering this.
 3 So I don't really think it's fair to ask
 4 Mr. Livingston these questions.
 5 Q Can you -- I understand the objection but it's
 6 not an instruction not to answer so you can
 7 answer.
 8 MS. BAUMGARDNER: If you can answer, go
 9 ahead.
 10 A I'm not sure what you're asking. What was the
 11 question?
 12 Q At the time that we made the interrogatory you
 13 could have provided the birth dates of these
 14 individuals, correct; the ones that you
 15 provided on the list of DL12?
 16 A Yes.
 17 Q And you didn't do so?
 18 A Because that's not what you asked for.
 19 Q What do you understand that we asked for?
 20 A You asked for name --
 21 Q Well, I asked for the birth dates, correct?
 22 A You asked for a name, aliases and birth date.
 23 Q Well, but you could have provided the birth
 24 dates, right?
 25 A Not since 1978.

1 A That's very different.
 2 Q Well, 2005 to 2009 falls within '78, correct,
 3 since 1978, correct?
 4 A Yes.
 5 Q So at the time could you have provided it from
 6 2005 to 2009?
 7 A 2005 to 2009.
 8 Q (Nods head.)
 9 A Well, with enough work, yes, I could have
 10 found those records.
 11 MS. BAUMGARDNER: Well, and also let
 12 the record reflect what this interrogatory has
 13 asked for in comparison to what Mr. Livingston
 14 has produced which is not --
 15 Q Well, the interrogatory asks for the birth
 16 dates, right?
 17 A Name and aliases.
 18 Q The interrogatory asks for birth dates,
 19 correct?
 20 A Yes.
 21 Q And if you were able to provide that answer at
 22 that time why didn't you do it?
 23 A That's not what you asked for.
 24 MS. BAUMGARDNER: Objection. And part
 25 of it was in consultation with counsel who

1 Q But since 2005 to 2009, correct?
 2 A Yes, and we did.
 3 Q Last week?
 4 A Yes.
 5 Q And when was this interrogatory made?
 6 A You didn't ask for that date range until right
 7 before I provided it.
 8 Q Well, but the date range was within the date
 9 range that appears on the interrogatory,
 10 correct?
 11 A That's true.
 12 MS. BAUMGARDNER: You know, you can
 13 keep asking the witness, but again, some of
 14 that determination was made by counsel.
 15 Q If we go to Interrogatory No. 13, please, it's
 16 on page --
 17 A One.
 18 Q Thank you. Two. Right, one and the response
 19 is on Page 2.
 20 A Okay.
 21 Q If we go to number 2, the answer.
 22 MS. BAUMGARDNER: You mean Page 2?
 23 MR. BLADUELL: Yeah, Page 2.
 24 Q I'm going to read it. It's in the middle of
 25 the paragraph on your answer, "Prior to

1 enactment of 18 U.S.C. 2257(a), in the course
 2 of photographing nudes I took photographs that
 3 I believe would have been subject to 18 U.S.C.
 4 Section 2257(a). Those photos constitute a
 5 portion of thousands of photos that I took
 6 during each photo shoot."

7 Did I read that accurately,
 8 Mr. Levingston?

9 A Yes.

10 Q And the photos that you're referring to in
 11 Interrogatory No. 13 are the ones referenced
 12 in the list that you have in front of you
 13 marked as Exhibit DL12, correct?

14 A Yes.

15 MS. BAUMGARDNER: Objection.

16 Q Are there any other photos or models that
 17 you're referencing in your answer to
 18 Interrogatory 13 that are not included on the
 19 list in the DL12?

20 A The list only covers the date range that was
 21 specified.

22 Q So for the 2005 to 2009 time frame all of the
 23 models doing sexually explicit material that
 24 you would consider sexually explicit from the
 25 statutes are identified on the list?

1 A Simulated.

2 Q Simulated?

3 A Yes.

4 Q Okay. Thank you.

5 And when you say those photos in
 6 Interrogatory No. 13 you're referring to the
 7 ones in DL12, correct?

8 MS. BAUMGARDNER: Objection.

9 Q For the period of 2005 to 2009 --

10 A Yes.

11 Q -- constitute a portion of the thousands of
 12 photos that I took during each photo shoot.
 13 And what portion did they constitute from 2005
 14 to 2009?

15 A I don't know.

16 Q Is it 50 percent?

17 A No.

18 Q Less?

19 A Yes.

20 Q 30 percent?

21 A No.

22 Q Less?

23 A Yes.

24 Q Okay. Ten percent?

25 A I doubt that it reaches ten percent.

1 Q Okay. Thank you.

2 And when you first produced the list,
 3 DL12, correct, you listed 17 models; do you
 4 remember that?

5 A Yes.

6 Q And then there was one that you missed?

7 A Yes.

8 Q That you provided the next day?

9 A Yes.

10 Q And how did you miss that?

11 A As I recall, it was somebody who was in a
 12 shoot with several models and I missed adding
 13 the -- it was just a clerical error as I was
 14 counting.

15 MR. BLADUELL: I'm going to mark
 16 another exhibit, DL14.

17 (Defendant's Exhibit DL14
 18 marked for identification.)

19 Q Mr. Levingston, do you recognize that picture?

20 A Yes, I do.

21 Q And is that one of the pictures referenced in
 22 your list of DL -- marked as Exhibit DL12?

23 A Yes.

24 Q And this picture -- strike that.

25 Why do you think that this picture is

1 A subject to 2257(a)?

2 A Well, I'm not sure that it is but it could be
 3 interpreted that way because the model's
 4 genitals are visible.

5 Q Okay. So the difference between this picture
 6 and the ones that you've provided before --
 7 the ones that are marked as exhibits DL8 to
 8 DL10 is that the genital area is more exposed?

9 A Yes.

10 Q And why do you consider that simulated?

11 A I don't.

12 Q But why do you consider that they could be
 13 interpreted that way?

14 A It's because of the ambiguity of lascivious
 15 display. I don't know what that means but
 16 there they are so.

17 Q But you don't think it means the other
 18 pictures, correct?

19 A Yes, I do not.

20 Q But this one does then?

21 A I think it could be interpreted by someone to
 22 fall under the statute.

23 Q And is the reason just because it's more of
 24 the genital area than the other ones?

25 A Yes.

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1 Q After 2009 have you produced other images that	1 A I don't know.	2 Q You don't recall right now?	
2 you think are subject to 2257(a)?	3 A I don't recall. I don't have any records	4 either.	
3 A No. Well, wait. There was one that in	5 Q You don't have records of when you sell?	6 A Right.	
4 retrospect looking back I thought well	7 Q But was your primary intent when you took	8 these photographs to sell them?	
5 somebody could think this is, so I included it	9 A No.	10 Q Or to trade them --	
6 on the list.	11 A No.	12 Q -- for other photographs?	
7 Q Is that number one on DL12?	13 A No.	14 Q No?	
8 A Yes.	15 A No.	16 Q Your primary purpose was just to take them to	
9 Q So is that the only model who has appeared	17 express a feeling or?	18 A To create art.	
10 depicted in simulated sexually explicit	19 Q To create art.	20 MR. BLADUELL: I'm going to mark	
11 conduct after March 18, 2009?	21 another exhibit, DL15, and I'm going to	22 provide a copy to Mr. Livingston and a copy to	
12 A Yes.	23 Ms. Baumgardner.	24 (Defendant's Exhibit DL15	
13 MS. BAUMGARDNER: Which model, number	25 marked for identification.)	26	
14 one?			
15 MR. BLADUELL: Number one.			
16 Q All of the other ones were made before March			
17 18, 2009?			
18 A Right.			
19 Q Now, is it your understanding that for the			
20 number -- for number one, is it your			
21 understanding that you have to keep 2257			
22 records for that model?			
23 A No.			
24 Q And why do you think that?			
25 A Nothing has ever been done with those			
Page 134		Page 136	
1 photographs. It was a failed photo shoot.	1 Q Mr. Livingston, can you describe what DL15 is?	2 A It's my profile page from the web site Model	
2 That's why I didn't remember it even. And I	3 Mayhem.	4 Q Can you describe what Model Mayhem is?	
3 didn't even discover it until going through	5 A It's a site where models and photographers	6 show their work and a place for models to find	
4 and looking for this in specific, and I found	7 work and photographers to find models.	8 Q How often have you used Model Mayhem to	
5 this shoot and I looked at the pictures and I	9 recruit -- find models?	10 A I don't know. I probably would find maybe two	
6 thought well, maybe somebody would think this	11 or three models a year on the site.	12 Q When did you write this profile?	
7 would fall under it, so I included it on the	13 A Maybe -- well, I've edited the profile within	14 the past year.	
8 list.	15 Q Okay. Do you see that the document has some	16 dates at the right?	
9 Q So the picture number one in DL12 has not been	17 A This here? (Indicating.)	18 Q I'm sorry, at the left top that says info in	
10 published --	19 that column, last activity?	20 A Oh, last activity, yes.	
11 A No.	21 Q March 21, 2013?	22 A Uh-huh.	
12 Q -- anywhere?	23 Q So that's the last time you logged into it?	24 A No.	
13 A Or seen by anyone.	25 Q No?		
14 Q Or seen by anyone?			
15 A Right.			
16 Q How about the other pictures in this -- in			
17 DL12, have they been published?			
18 A Some of them have been. Well, I don't know			
19 that anything has been published without doing			
20 a check for that, but -- and I don't really			
21 have records that I can check, but some of			
22 them have been exhibited in galleries.			
23 Q And web sites?			
24 A Yes.			
25 Q Have you sold any of these?			

1 A No. That records whenever you log into the
2 site. I log into the site every day.
3 Q So is that the last time that you logged in by
4 the date that appears on the lower level of
5 the document?
6 A The last time I logged in was yesterday.
7 Q Okay.
8 A I log in every day.
9 Q Did you change anything?
10 A No.
11 Q So if I go to your profile right now does it
12 say the same thing at the beginning?
13 A I believe so, yes.
14 Q Okay. You say in this document I'm no longer
15 using models for my primary photo work,
16 correct?
17 A Yes.
18 Q So why have you decided not to use models for
19 your work?
20 A As I mentioned earlier I have two new projects
21 that are the primary emphasis of my work right
22 now. But another reason for this, this web
23 site Model Mayhem is problematic in that you
24 get lots of emails from models. And I try
25 to keep models that I don't want to talk to from

1 A Okay.
2 Q It says that you were approached by a former
3 prostitute while doing a project that
4 contained depictions that could fall under
5 2257(a), correct?
6 A Yes.
7 Q Well, in light of your desire to move away
8 from model work, is this a project that you
9 still want to do?
10 A This is not a model project, this is a
11 documentary project, so yes.
12 Q You still want to do this?
13 A Yes.
14 Q When were you approached by this former
15 prostitute?
16 A Within the past year.
17 Q 2012?
18 A Yes.
19 Q And where were you approached by this former
20 -- by this person?
21 A In my studio.
22 Q She came to your studio?
23 A Yes.
24 Q Is this a person that you knew before you met
25 her?

1 emailing me. So that's one reason for that
2 first line.
3 Q And is it accurate what is in the document,
4 that the bulk of my new work does not involve
5 new models?
6 A Yes.
7 Q And the reason for that is that the projects
8 that you're interested in doing, the ones that
9 you described before about journalism and the
10 funerals, do not involve depictions of models?
11 A It's journalism and alternative process
12 photographers.
13 Q I'm sorry. Thank you for correcting me.
14 A Yes. Nobody gets naked in those pictures.
15 Q Did you decide to shift attention to those
16 projects because it was burdensome to do nude
17 models?
18 A No.
19 Q Let's go back to DL3. It's the answers to
20 your first set of interrogatories. And if we
21 go to the third -- Interrogatory No. 10, it
22 Page 5. I'm sorry, Page 6. The last
23 paragraph here on Page 6 of DL3, can you just
24 read that for a second and let me know when
25 you're finished please.

1 A Yes. No, I didn't know her before I met her.
2 Q Okay.
3 A But yes, I've known her --
4 Q Did you know her before she came to your
5 studio.
6 A I've known her for some time, yes.
7 Q Is she your friend?
8 A Yes.
9 Q Is she also a model?
10 A Yes.
11 Q So after she was a prostitute she became a
12 model?
13 A No.
14 Q She was a model who became a prostitute?
15 A Yes.
16 Q Have you had work with her as a model before
17 she became a prostitute?
18 A Yes.
19 Q Does that involve nude work?
20 A Yes.
21 Q Do you have any records documenting this
22 approach by this person?
23 A No. It was just a conversation.
24 Q And how long did the conversation last?
25 A I don't know. We were talking for an hour or

1 two probably.
 2 Q Okay. What is the age of this person?
 3 A I don't know. I think she just turned 30.
 4 Q And have you published pictures of this
 5 person, nude pictures of this person?
 6 A I've exhibited some.
 7 Q And can you describe more in detail what you
 8 discussed about this project with this person?
 9 A Well, I guess so. She knows a number of
 10 former prostitutes and she is an author now
 11 and is interested in doing a book about her
 12 experiences and the impact of that part of her
 13 life on her later life, and we discussed the
 14 possibility of making a book with photographs.
 15 Q And you discussed that with her for an hour?
 16 A More than an hour.
 17 Q An hour, an hour and a half?
 18 A I don't know, I wasn't watching the clock. We
 19 talked.
 20 Q Approximately an hour and a half?
 21 A I don't know.
 22 MS. BAUMGARDNER: Objection.
 23 A I don't know. I didn't -- I didn't keep
 24 track.
 25 Q Is it possible that it was more than two

1 MS. BAUMGARDNER: Objection.
 2 A The book can take many forms. That's one form
 3 that it could take. It's in the conceptual
 4 stage so it's hard to say.
 5 Q You don't know, haven't contacted a publisher
 6 about this book?
 7 A No.
 8 Q Haven't got any advance?
 9 A No.
 10 Q You haven't met any of the other former
 11 prostitutes that would be involved with this
 12 work?
 13 A No. This is a project I would not pursue
 14 while this law is in force so I have not
 15 pursued it.
 16 Q Now, you said in your answer to Interrogatory
 17 10 that this project would involve depictions
 18 of the scars of the former prostitutes,
 19 correct?
 20 A That is a possible thing that could be
 21 included. This is all at the conceptual stage
 22 now so I don't know what the photographs would
 23 include.
 24 Q Would the depictions include their faces?
 25 A That again would depend on the situation and

1 hours?
 2 A It's possible. And there has been more than
 3 one conversation.
 4 Q Okay. So subsequent conversations, can you
 5 describe them?
 6 A Just?
 7 Q The number of times.
 8 A No, I don't know.
 9 Q Is it more than ten conversations?
 10 A No.
 11 Q Approximately five?
 12 A Maybe. In that neighborhood
 13 Q Maybe less than five?
 14 A Approximately five.
 15 Q Okay. And how have the conversations evolved
 16 in relation to this project?
 17 A We haven't gone very far with it. She's
 18 finishing up a book now so this is something
 19 for down the road once we get this law
 20 overturned.
 21 Q Do you have any concrete plans to take
 22 pictures associated with this book?
 23 A No.
 24 Q Is taking pictures necessary for the book that
 25 she's writing?

1 how the project evolves. Certainly it
 2 wouldn't without the consent of the person
 3 involved.
 4 Q Well, you say here that, "Perhaps could show
 5 the scars or other physical effects of the
 6 work that the women did," correct?
 7 A Yes. That's a possibility.
 8 Q Would you think that those pictures would be
 9 sexually explicit?
 10 A They could be interpreted as lascivious
 11 display. It's possible.
 12 Q And by lascivious display you mean?
 13 A The genitals might be in the picture or
 14 something.
 15 Q Would it be like a close up of the genital
 16 area?
 17 A You're asking for specifics on something that
 18 is nowhere near specific at this point.
 19 Q So there is really no way you can know right
 20 now if the pictures would be subject to the
 21 statutes?
 22 MS. BAUMGARDNER: Objection.
 23 A Well, it's way too early to know.
 24 Q You haven't -- you have not fully
 25 conceptualized what the pictures would entail,

1 correct?
 2 A Correct. It's certainly possible to believe
 3 that they could include things that would fall
 4 under 2257(a).
 5 Q And it's possible that they could not be
 6 subject to the statutes?
 7 A It's possible.
 8 Q Would you publish the names of the former
 9 prostitutes in the book?
 10 A I don't know. Probably not.
 11 Q Now, you said that you -- the recordkeeping
 12 requirements of the -- in your answer to
 13 Interrogatory No. 10 you said that the
 14 recordkeeping requirements of the statute
 15 would compromise the identities of the
 16 subjects, correct?
 17 A Yes.
 18 Q And the recordkeeping requirements would
 19 require you to take a photo of their -- or to
 20 make a copy of their ID, correct?
 21 A I believe so, yes.
 22 Q And why would that -- but you don't need to
 23 publish that in the book, correct?
 24 A I believe that's right.
 25 Q And if you don't publish the information in

1 access to my records and thereby --
 2 Q But you would not willingly share that with
 3 other people, correct?
 4 A That's true.
 5 Q So what you're saying is it's possible that
 6 someone can access the records without your
 7 consent?
 8 A Yes.
 9 Q Have people accessed records in your studio
 10 without your consent?
 11 A No.
 12 Q Do you think it's likely that people would
 13 access records in your studio without your
 14 consent?
 15 A No.
 16 Q Have you contacted an attorney to advise you
 17 on how to publish this book?
 18 A No.
 19 Q Or about how to comply with the 2257 in
 20 relation to the book?
 21 A No.
 22 Q Do you have plans to talk to this individual
 23 in the near future to discuss this book?
 24 A No specific plans at this time.
 25 Q Do you anticipate making plans?

1 the book how would it compromise the identity
 2 of the subjects?
 3 A It would be revealed to any inspector who
 4 inspected the records.
 5 Q If no inspector inspected the records then how
 6 would that compromise the identity of the
 7 individuals?
 8 A Well, it could make the individual reluctant
 9 to participate just by having to provide their
 10 ID.
 11 Q That's not the question. The question is how
 12 they would compromise the identity, not if
 13 they are reluctant. So how would they
 14 compromise the identity of the individual if
 15 there is no inspection of records?
 16 A It would compromise the identity of the
 17 individual because I would know their name.
 18 Q So other than you would anyone necessarily
 19 have that information?
 20 A Not necessarily, but possibly.
 21 Q How would they obtain that information?
 22 A Through my records.
 23 Q And would you provide that to other people?
 24 A We're way beyond -- we're way into speculation
 25 here but it's possible that someone could get

1 A Yes.
 2 Q When do you think you're going to talk to this
 3 person again?
 4 A I have no idea.
 5 Q You don't have it in your calendar?
 6 A Right.
 7 Q Are there any other projects like the one you
 8 described in Interrogatory No. 10 involving
 9 depictions of sexually explicit material or
 10 simulated sexually explicit material that you
 11 want to do but you wouldn't -- you've decided
 12 that you would not do because of the statutes?
 13 A Nothing specific.
 14 Q When you say nothing specific, is there -- do
 15 you have an idea in your mind of a project
 16 that you would like to do?
 17 A Not at this time.
 18 Q Let's go back to Interrogatory No. 5, please.
 19 It's on Page 3. It says in this second
 20 paragraph, Mr. Livingston, "I have ceased
 21 producing any erotic work that might arguably
 22 fall under the statute because I am unable to
 23 be constantly available to allow inspection of
 24 the records as required by the statutes and
 25 therefore do not want to risk prosecution for

1 violating the statutes, nor am I willing to
 2 waive my Fourth Amendment rights to allow such
 3 inspections." Is that an accurate reading?
 4 A Yes.
 5 Q By erotic work in this sentence do you mean
 6 nudes or --
 7 A I mean work that would fall under 2257(a).
 8 Q So you have not ceased producing nude work
 9 because of this statute?
 10 A No.
 11 Q Correct? Is that a yes?
 12 A I have not ceased producing nude work.
 13 Q Okay.
 14 A Yes.
 15 Q Now, do you keep your records in your studio?
 16 A Yes.
 17 Q And where is that studio?
 18 A In Dayton, Ohio.
 19 Q And how far is that from your house?
 20 A About 25 miles.
 21 Q Are there other people in the studio?
 22 A Yes.
 23 Q And who are these people?
 24 A I share the studio with two other
 25 photographers.

1 A Yes.
 2 Q Are there sometimes that you all travel at the
 3 same time?
 4 A Not together.
 5 Q What is the nature of their work, the other
 6 two photographers in your studio?
 7 A One of them does nude work, the other does
 8 commercial work.
 9 Q Do they travel often for their work?
 10 A The one that does nude work does.
 11 Q And the other one doesn't?
 12 A Right.
 13 Q Does the other photographer that does nudes,
 14 does he travel more than you?
 15 A No, I'd say I travel more than him.
 16 Q So when you're traveling could they serve as
 17 custodian of the records?
 18 MS. BAUMGARDNER: Objection.
 19 A No.
 20 Q Could they open the door of the studio to an
 21 inspector?
 22 A Yes.
 23 Q But your records would be in your computer,
 24 right?
 25 A I don't keep any records.

1 Q Are these photographers your friends?
 2 A Acquaintances.
 3 Q So not really friends?
 4 A Right.
 5 Q How long have you known them for?
 6 A One of them for about five years, the other
 7 one for less than a year.
 8 Q Have they been to your house?
 9 A No.
 10 Q Have you been to their house?
 11 A No. Well, one of them I've been to his house,
 12 yes.
 13 Q In a social setting?
 14 A Not for a party or anything, just stopping by.
 15 Q Was it work related or --
 16 A Yes. Yeah.
 17 Q Is there a secretary in the studio?
 18 A No.
 19 Q When you travel for work do they travel with
 20 you?
 21 A They?
 22 Q The photographers.
 23 A No.
 24 Q So sometimes when you travel these
 25 photographers stay in the studio?

1 Q Any pictures -- well, you keep IDs, right, of
 2 the models?
 3 A Yes.
 4 Q And model releases?
 5 A Yes.
 6 Q In paper form?
 7 A The releases are in paper form.
 8 Q And those releases are in a cabinet?
 9 A In a desk drawer.
 10 Q Desk drawer. And is that drawer locked?
 11 A No.
 12 Q Okay. Do you feel it's likely that you will
 13 be prosecuted under the statutes?
 14 MS. BAUMGARDNER: Objection.
 15 A I certainly hope not.
 16 Q But you don't think it's likely?
 17 MS. BAUMGARDNER: Objection.
 18 A I hope not. I think the statute is so vague
 19 that anyone who takes a nude photograph could
 20 be prosecuted under it.
 21 Q Do you know any other photographers who have
 22 photographed nudes without being inspected?
 23 A No.
 24 Q Do you know any of the other photographers who
 25 do nudes who have been prosecuted?

1 them sign model releases that include
 2 statement of their age"?
 3 A Yes.
 4 Q When you say that you've never worked with
 5 models under the age of 18, does that apply to
 6 your -- are you referring to your nude work?
 7 A Yes.
 8 Q Not only your sexually explicit -- simulated
 9 sexually explicit work?
 10 A Yes.
 11 Q If we go to Interrogatory No. 10, if we go to
 12 the third paragraph, the last sentence, it
 13 says, "Yet none of my work depicts persons who
 14 could be confused as children."
 15 A Yes.
 16 Q When you say none of your work, does that
 17 include your nudes that are not simulated
 18 sexually explicit?
 19 A Yes.
 20 Q Okay.
 21 (Defendant's Exhibit DL17
 22 marked for identification.)
 23 MR. BLADUELL: I'm going to provide
 24 a copy to counsel. I'm not going to question
 25 the witness.

1 Just for the record we had requested
 2 some samples of depictions and counsel has
 3 refused to provide them arguing that they were
 4 not relevant. And we do believe that these
 5 are relevant to assess the claims
 6 Mr. Levingston makes with regards to his First
 7 Amendment claim, therefore, we're going to
 8 request again these pictures.

9 We ask them to be produced
 10 immediately. If we don't reach an agreement
 11 by the end of the deposition or today our
 12 intention is to contact the court to compel.

13 MS. BAUMGARDNER: Okay.

14 MR. BLADUELL: Refusal to provide
 15 the pictures limits our ability to assess this
 16 claim by Mr. Levingston for the deposition
 17 today. The exhibit reflects that we've made
 18 that clear to opposing counsel. So we reserve
 19 the right to reopen the deposition if we get
 20 these pictures to question Mr. Levingston
 21 about them.

22 Q When you say in Interrogatory No. 10,
 23 Mr. Levingston, that none of my work depicts
 24 persons who could be confused as children,
 25 that's accurate, right?

1 A Yes.
 2 Q But you have produced depictions of models
 3 that are 18 years of age, correct?
 4 A Have I? I don't believe so.
 5 Q Nude depictions?
 6 A I don't believe so.
 7 Q You don't believe -- okay. So you have not --
 8 your recollection is that you have produced
 9 nude depictions?
 10 A You're talking about have I taken?
 11 Q Yes.
 12 A I don't believe so but it's possible.
 13 Q Is it possible that you've taken pictures
 14 involving nudes of women that are 19 years
 15 old?
 16 A That is possible
 17 Q Do you believe that it is possible or
 18 probable?
 19 A Probable.
 20 Q And is it your opinion that an 18 year old and
 21 a 19 year old cannot be confused with a minor?
 22 A Not if you're checking their ID.
 23 Q So you would need the ID to know, correct?
 24 MS. BAUMGARDNER: Objection.
 25 A I would check their ID to be sure.

1 Q Can you tell from looking at them? Can you
 2 tell apart a 17 year old and a 19 year old?
 3 MS. BAUMGARDNER: Objection.
 4 A No.
 5 Q Can you tell apart a 17 year old from a 19
 6 year old?
 7 MS. BAUMGARDNER: Objection.
 8 A Probably not.
 9 Q Can a person below the age of 18 reach full
 10 maturity with respect to pubic hair?
 11 A I don't know. You're in an area I just don't
 12 know.
 13 Q Have you photographed individuals under 18
 14 years old nude?
 15 A No.
 16 Q Ever?
 17 A No.
 18 Q Other than your kids have you seen individuals
 19 under the age of 18 nude?
 20 MS. BAUMGARDNER: Objection.
 21 A Not that I know of.
 22 Q When you wrote in Interrogatory No. 7,
 23 Mr. Levingston --
 24 MS. BAUMGARDNER: Of Exhibit 3?
 25 MR. BLADUELL: Of DL3, correct.

1 A G applies to this.
 2 Q Okay.
 3 A You didn't let me read.
 4 Q You can read it. "Notwithstanding any
 5 provision of this part or any other regulation
 6 a law enforcement officer may seize any
 7 evidence of the commission of any felony while
 8 conducting an inspection."
 9 A Sounds to me like they can look around and
 10 seize anything that they want to.
 11 Q I mean, it doesn't say the law enforcement
 12 officers can look around for evidence,
 13 correct?
 14 MS. BAUMGARDNER: Objection.
 15 A It doesn't use those words.
 16 Q It says the officers may seize any evidence?
 17 A Right.
 18 Q Do you see in number three that it says, "The
 19 inspection should not be conducted so as to
 20 unreasonable disrupt the operations of the
 21 establishment"?
 22 A Yes.
 23 Q I have no further questions at this time.
 24 MS. BAUMGARDNER: Just have one more
 25 follow-up.

1 FURTHER REDIRECT EXAMINATION
 2 By Ms. Baumgardner:
 3 Q G, as you pointed out, states,
 4 "Notwithstanding any provision of this part or
 5 any other regulation;" is that correct?
 6 A Yes.
 7 Q So although Mr. Bladuell pointed out three, G
 8 says notwithstanding any other provision?
 9 A It does.
 10 MS. BAUMGARDNER: I have nothing
 11 further.
 12 MR. BLADUELL: Okay.
 13 (Deposition concluded at 5:25 p.m.)
 14 (Signature waived.)
 15 - - -
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1 State of Ohio,)
 2) SS: CERTIFICATE
 3 County of Cuyahoga,)
 4 I, Karen A. Toth, RPR and Notary Public
 5 in and for the State of Ohio, duly commissioned and
 6 qualified, do hereby certify that the within named
 7 witness, Dave Livingston, was by me first duly sworn
 8 to testify the truth, the whole truth, and nothing
 9 but the truth in the cause aforesaid; that the
 10 testimony then given by him was by me reduced to
 11 stenotypy/computer in the presence of said witness,
 12 afterward transcribed, and that the foregoing is a
 13 true and correct transcript of the testimony so
 14 given by him as aforesaid.
 15 I do further certify that this deposition was
 16 taken at the time and place in the foregoing caption
 17 specified and was completed without adjournment
 18 I do further certify that I am not a relative,
 19 counsel, or attorney of either party, or otherwise
 20 interested in the event of this action.
 21 IN WITNESS WHEREOF, I have hereunto set my
 22 hand and affixed my seal of office at Cleveland,
 23 Ohio on this 8th day of April, 2013.
 24
 25 Karen A. Toth, RPR and Notary Public in
 and for the State of Ohio.
 My Commission expires May 6, 2013.



Compressed Transcript of the Testimony of
EUGENE H. MOPSIK, 3/19/13

Case: Free Speech Coalition, Inc., et al., v. Holder, Jr.

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<p style="text-align: right;">Page 9</p> <p>1 A That was my only source of income for 32 2 years. 3 Q How would you characterize the membership 4 of your organization? 5 A Clarify, please. Do you mean -- I guess 6 my question would be what kind of work did they do? 7 Are they happy? Are they sad? I'm not sure -- how 8 would I characterize them? It depends on a lot of 9 things. 10 Q Well, they're all, I assume, 11 photographers? 12 A Most of our members are working 13 photographers; some of them are students. We do 14 have a student member category. We have different 15 categories of membership. 16 We have a full-time, working 17 photographer category that comprises our voting 18 membership. Then we have a kind of 19 emerging-photographer category, we have a 20 student-photographer category. 21 We also have a category for 22 affiliated people in the trades so that if someone 23 from Nikon or Canon or Olympus or Adobe wanted to be 24 tuned into what our association is doing, they could 25 become an affiliate member.</p>	<p style="text-align: right;">Page 11</p> <p>1 primarily the digital vehicles which -- things like 2 iPads and the web and other means of display, like 3 motion. So photographers move to motion because 4 that's what the medium wants. 5 Q Do you think all of the photographers in 6 your group that do video began as still 7 photographers and then became -- 8 A Couldn't say all of them. I would say 9 many of them were -- again, if you're looking at 10 members prior to digital transition who were film 11 shooters, they would first transition to digital and 12 then along the way, given the technology of today's 13 DSLR cameras, which have the capability to shoot 14 both stills and HD video, it was a logical 15 transition for them. So they kind of tested the 16 water there. 17 But we also have some members who 18 are, I would grant it, probably a fairly small 19 number who are strictly motion photographers. 20 Q Could you describe the process for 21 becoming a member? 22 A Well, to become a voting -- let's start 23 with voting member, which would be what we classify 24 as a general member. So to be a general member of 25 ASMP -- we're the only photographers association</p>
<p style="text-align: right;">Page 10</p> <p>1 Q Do the photographers in your organization 2 work in a particular medium of photography? Is that 3 the right -- 4 A Are you talking about whether it's sports 5 or fashion or -- 6 Q What is the word that you use to indicate 7 digital versus print versus video? 8 A Well, almost all photographers today are 9 working digitally. The ones who aren't doing it, 10 either out of some technical necessity, which would 11 be more in the case of architecture people who shoot 12 large format material and then scan it immediately 13 to digital format, but the capture would be in an 14 analog means on film. 15 But most photographers, their 16 original capture or the original impression would be 17 gathered digitally today. 18 Q Does your membership include filmmakers as 19 well as still photographers? 20 A More and more still photographers are 21 crossing over into motion work out of necessity and 22 out of -- it's -- the old paradigm was images going 23 to print. The new paradigm is images going to 24 digital use. 25 And so the digital formats, which is</p>	<p style="text-align: right;">Page 12</p> <p>1 that I'm aware of that you simply can't join by 2 writing a check and saying I want to be a voting 3 member. 4 You need to, number one, have two 5 member sponsors, you need to show a body of work 6 that indicates you've worked as a professional for a 7 period of three years, and you need to make the 8 majority of your earned income from the sale or 9 license of your images. 10 (Exhibit Mopsik-1 was marked 11 for identification.) 12 MS. WYER: Let the record reflect I've 13 marked an exhibit as Mopsik-1. 14 BY MS. WYER: 15 Q Do you recognize this? 16 A It appears to be a capture from our 17 application page on the website. I think that's 18 what it is. 19 Q Is this the application form that someone 20 would have to fill out to become a member? 21 A Well, it's part of it for general members. 22 Because for a general member, if they were to fill 23 this out and submit it what happens is that triggers 24 a response on our side that would go to the Chapter 25 Membership Committee and then they would reach out,</p>

Page 17	Page 19
<p>1 a local level.</p> <p>2 Q What is the mission of ASMP?</p> <p>3 A Is to protect and promote the interests of</p> <p>4 working publication photographers, primarily through</p> <p>5 information, education and advocacy.</p> <p>6 Q Are there particular issues that you focus</p> <p>7 on?</p> <p>8 A If ASMP is known for anything over its</p> <p>9 years -- we were founded in 1944 by a group of</p> <p>10 primarily Jewish disgruntled socialist photographers</p> <p>11 who were bigtime photographers working primarily for</p> <p>12 Time Life and all the major news media. They</p> <p>13 weren't happy with what basically came down to rates</p> <p>14 and rights that they were getting. They were the, I</p> <p>15 guess, original -- you know, they kind of set the</p> <p>16 tone for ASMP's future.</p> <p>17 Today, I guess we're known as an</p> <p>18 association who, I guess, we're the leader in</p> <p>19 business and rights education for photographers. We</p> <p>20 do a number of seminars and programs, either through</p> <p>21 our chapters or through other trade events around</p> <p>22 the country, on an annual basis promoting various</p> <p>23 aspects of business practices for working</p> <p>24 photographers, along with trying to educate</p> <p>25 photographers regarding their copyright, copyright</p>	<p>1 corporate group, we have an underwater group, we</p> <p>2 have an architecture group, but they only meet</p> <p>3 virtually.</p> <p>4 Q What do they do in this virtual meeting?</p> <p>5 A Well, they're primarily list serves. They</p> <p>6 talk about trade issues, business issues. Sometimes</p> <p>7 it's technical discussions about craft, issues</p> <p>8 related to dealing with a particular circumstance on</p> <p>9 the job, be it lighting or technical or file</p> <p>10 processing or something or another.</p> <p>11 Other times it's about people have</p> <p>12 questions about what they might charge for a job or</p> <p>13 what other people charge for similar jobs, so they</p> <p>14 could get an idea of what they should be charging.</p> <p>15 Q Is there any official designation of</p> <p>16 someone when they join a group like that?</p> <p>17 A No official designation. In our database</p> <p>18 there's a field which would indicate whether or not</p> <p>19 they've designated themselves as a participant in</p> <p>20 that group, which would simply mean they've, in</p> <p>21 effect, logged in to that list serve.</p> <p>22 Q Can you be in more than one specialty</p> <p>23 group?</p> <p>24 A Yes.</p> <p>25 Q They can just decide to join themselves?</p>
Page 18	Page 20
<p>1 issues, and the value of their rights.</p> <p>2 Q So when you say "rights," do you mean --</p> <p>3 A Intellectual property rights.</p> <p>4 Q Other than the geographical chapters, is</p> <p>5 there any other kind of subdivision? Are there</p> <p>6 subdivisions within the organization?</p> <p>7 A No.</p> <p>8 Q Are there subgroups?</p> <p>9 A Not officially. So a school like Brooks</p> <p>10 or RIT or SCAD, they're all college-level programs</p> <p>11 with significant photography departments.</p> <p>12 Unofficially they may have what they call a student</p> <p>13 chapter. They don't exist on our books anywhere as</p> <p>14 a student chapter. They're basically a student</p> <p>15 group that would be tied to the nearest actual</p> <p>16 chapter.</p> <p>17 But when I have a significant number</p> <p>18 of students, they sometimes think of themselves as a</p> <p>19 chapter, but they're not officially.</p> <p>20 Q Are there groups based on subject matter?</p> <p>21 A Virtual, not actual.</p> <p>22 Q What does that mean?</p> <p>23 A Means we have online communities. We have</p> <p>24 specialty groups that exist only in the virtual</p> <p>25 world. So we have a fine art group, we have a</p>	<p>1 A Yes.</p> <p>2 Q Do your members create depictions of</p> <p>3 sexually-explicit conduct? When I say</p> <p>4 "sexually-explicit conduct" I mean as defined under</p> <p>5 the 2257 requirements. First of all, are you</p> <p>6 familiar with 2257?</p> <p>7 A Yeah, basically I am. I would say yes.</p> <p>8 Q Do you know if any of your members qualify</p> <p>9 as secondary producers?</p> <p>10 MS. BAUMGARDNER: Objection. If you know</p> <p>11 what that is, Mr. Mopsik. But go ahead and</p> <p>12 answer. I'm just objecting for the record.</p> <p>13 THE WITNESS: I'm not sure what that</p> <p>14 means, if that's a distributor or some other</p> <p>15 level of involved in the production chain of</p> <p>16 that material.</p> <p>17 If that's what you're asking, then again I</p> <p>18 have no firsthand knowledge of that. But I</p> <p>19 wouldn't be surprised, I guess, either.</p> <p>20 BY MS. WYER:</p> <p>21 Q Okay. So you're not familiar with the</p> <p>22 term "secondary producer" in the 2257 context?</p> <p>23 A No.</p> <p>24 Q What percentage of your membership creates</p> <p>25 images that are covered under 2257 or 2257A?</p>

<p style="text-align: right;">Page 37</p> <p>1 members who create depictions of sexually-explicit 2 conduct in the context of health or medical 3 related --</p> <p>4 A Again, I don't know the specific members 5 who were doing this. I know we have a lot of -- I 6 guess a significant number of members who are 7 involved in, you know, work related to the 8 healthcare trade, hospital and mental health areas.</p> <p>9 We also have a significant number of 10 photographers who supply images for textbooks, which 11 is a major source of income for many photographers. 12 But specifically in regard to this type of images, 13 no.</p> <p>14 Q What about ASMP members who create 15 depictions of sexually-explicit conduct as part of 16 the adult film industry?</p> <p>17 A Yeah, I don't -- I'm not familiar with 18 them. I would assume that -- again, through our 19 responses -- that there are a small number of ASMP 20 members who actually contribute to the adult film or 21 adult entertainment industry, but I'm not familiar 22 with them.</p> <p>23 Q And by "adult film industry," you mean 24 what others might call hardcore pornography films?</p> <p>25 A Producing sexually-explicit films.</p>	<p style="text-align: right;">Page 39</p> <p>1 I'm not familiar. But I would assume that they 2 exist.</p> <p>3 Q So you can't think of any examples for any 4 ASMP members in this category of independent film 5 productions in adult entertainment?</p> <p>6 A Me personally, no, I can't.</p> <p>7 MS. WYER: We can take a break now.</p> <p>8 MS. BAUMGARDNER: Okay. Thank you very 9 much.</p> <p>10 (Brief recess.)</p> <p>11 BY MS. WYER:</p> <p>12 Q So continuing -- and for the record, we 13 just took a break. Now we're back and going back to 14 the response to Interrogatory number 7.</p> <p>15 The next sentence states, Some of our 16 members create erotic portraits commissioned by 17 adult couples or individuals for their own private 18 use.</p> <p>19 Did I read that accurately?</p> <p>20 A Mm-hmm. Yes.</p> <p>21 Q What is this sentence referring to?</p> <p>22 A I would -- my understanding would be, and 23 again I'm not -- I don't have direct knowledge of 24 particular members who do this, but I'm aware of, I 25 guess, this genre of work, and I guess it would</p>
<p style="text-align: right;">Page 38</p> <p>1 Q Can ASMP members -- nothing prevents 2 someone who produces adult films from being an ASMP 3 member, correct?</p> <p>4 A Correct. Assuming they have good business 5 practices, they meet the requirements for 6 membership, then they can be a member.</p> <p>7 MS. BAUMGARDNER: I don't mean to 8 interrupt, when you have a moment, I could use 9 a break. If you need to finish, I don't want 10 to interrupt your flow here.</p> <p>11 MS. WYER: I'll just finish the last 12 category he mentioned and we can...</p> <p>13 MS. BAUMGARDNER: I appreciate it.</p> <p>14 BY MS. WYER:</p> <p>15 Q The last category you mentioned was the 16 sexual and psychological counseling. Do you know of 17 any examples of ASMP members who create depictions 18 of sexually-explicit conduct in that context?</p> <p>19 A Again, I'm not familiar with the 20 photographers personally, but again I think it would 21 fall under images that end up being used primarily 22 in textbooks and perhaps again in videos.</p> <p>23 I haven't -- I guess I haven't seen 24 the kinds of video productions that are used to 25 counsel people for sexual or psychosexual issues, so</p>	<p style="text-align: right;">Page 40</p> <p>1 revolve around couples who, for one reason or 2 another, want erotic portraits of each other, either 3 of one partner or the other or both together as a 4 gift momento, remembrance of the other partner.</p> <p>5 Q Do you know how many ASMP members are in 6 this category?</p> <p>7 A No.</p> <p>8 Q Can you name any examples?</p> <p>9 A No.</p> <p>10 Q Do you know if the ASMP members in this 11 category know the individuals that they are 12 photographing?</p> <p>13 A Yes.</p> <p>14 Q You know --</p> <p>15 A Would believe, just because my members are 16 professionals. They wouldn't be randomly 17 photographing people in erotic circumstances. These 18 would be commissioned works. So, I mean, whether 19 they know them -- they're not bosom buddies; they're 20 clients.</p> <p>21 Q So they would not necessarily know them 22 beforehand, they would just be hired to take --</p> <p>23 A Clients. Client/photographer</p> <p>24 relationship.</p> <p>25 Q So if there were any -- if we could</p>

<p style="text-align: right;">Page 45</p> <p>1 results list who would be involved in creating 2 depictions of sexually-explicit conduct? 3 A No. Did you do a search for anything to 4 see what the returns looked like? 5 Q I'm not sure. 6 How many ASMP members are currently 7 maintaining records under 18 USC 2257 or 2257A? 8 MS. BAUMGARDNER: Objection. 9 THE WITNESS: I have no knowledge. 10 BY MS. WYER: 11 Q Does ASMP provide any guidance to its 12 members on maintaining records under 2257 or 2257A 13 or otherwise complying with the 2257, 2257A 14 requirements? 15 A I think in general ASMP promotes good 16 business practices and professionalism. I believe 17 in the article that appeared in our magazine, we 18 advised our members regarding this matter. 19 I don't believe we have any other 20 information on it, on our website to my knowledge. 21 Q And this article was around three months 22 ago? 23 A I think that was within the last three or 24 four months. Can I ask -- 25 MS. BAUMGARDNER: You can't ask me, no.</p>	<p style="text-align: right;">Page 47</p> <p>1 Q What is the purpose of a model release? 2 A I guess in this context -- first of all, 3 again, ASMP is built on a foundation of good 4 business practices. So our photographers are 5 professionals. Many of the subjects that -- I guess 6 under most circumstances professional photographers 7 don't go trolling the streets for models. They call 8 up an agency and they have a casting call and they 9 send models. 10 So these are people who are being 11 compensated through an agency for appearing in 12 whatever the particular vehicle is, whether it's 13 advertising, editorial, corporate. Our 14 photographers need a release for a number of 15 reasons. 16 One, I guess in this context to 17 ascertain that the person is of age of majority and 18 able to sign their right. What's happening is the 19 model is assigning a publication right to the 20 photographer, which the photographer then reassigns 21 to his client. So that model release is, in fact, a 22 release of rights, a grant of rights, to the 23 photographer. 24 So those are the purposes, the basic 25 purposes of it.</p>
<p style="text-align: right;">Page 46</p> <p>1 THE WITNESS: I can't communicate with 2 counsel. I don't know the exact date when that 3 appeared. I know it was an article by Victor 4 Perlman in our ASMP bulletin. 5 BY MS. WYER: 6 Q Are those bulletins available on your 7 website? 8 A They are. 9 Q Was that the first time that ASMP has ever 10 mentioned 2257, 2257A to its members? 11 A To my knowledge, it probably was. Other 12 than -- I mean, I'm not sure -- well, it probably 13 was. 14 Q I'd like to go back to the Interrogatories 15 which are Exhibit 3. 16 A (Witness complies.) 17 Q So going to Interrogatory 8 which starts 18 on page 4. 19 A Mm-hmm. 20 Q The response states, Our members never 21 photograph minors in sexual conduct. We advise all 22 of our members to attain model releases for any 23 person they photograph. 24 Did I read that accurately? 25 A Correct.</p>	<p style="text-align: right;">Page 48</p> <p>1 Q And an ASMP member can get a model release 2 for someone under 18, correct? 3 A We have it on our website, a minor 4 release. 5 Q In that context, who would sign the 6 release? 7 A Parent or guardian. 8 Q But then sometimes individuals younger 9 than 18 can sign their own release, correct? 10 A Anybody can do anything. 11 Q Sometimes individuals under 18 are legally 12 able to sign their own release, correct? 13 A I'm not aware of that. I mean, I guess -- 14 legal? You're the lawyer. Are there legal 15 circumstances where someone who is under the age of 16 majority is actually of the age of majority, I 17 guess, or emancipated? Is that what we're talking 18 about here? 19 Q Well, let's look at another exhibit from 20 the website. 21 A Emancipated minors? 22 (Exhibit Mopsik-5 was marked 23 for identification.) 24 BY MS. WYER: 25 Q Do you recognize this?</p>

Page 53	Page 55
<p>1 to check IDs?</p> <p>2 MS. BAUMGARDNER: Objection.</p> <p>3 If you understand the question...</p> <p>4 THE WITNESS: Yeah, I would ask for a</p> <p>5 clarification.</p> <p>6 BY MS. WYER:</p> <p>7 Q Under a common-sense approach, should an</p> <p>8 ASMP member always check IDs for individuals who are</p> <p>9 under a particular age?</p> <p>10 A Again, my members are professionals. It's</p> <p>11 in their best interest to acquire the rights and</p> <p>12 permissions that they need in order to be able to</p> <p>13 fulfill the requirements of the job; therefore, it</p> <p>14 would be my assertion that if they had any question</p> <p>15 as to the age of majority of the subject, they would</p> <p>16 ask for adequate ID.</p> <p>17 Q Is it possible that different ASMP members</p> <p>18 would have a question -- one ASMP member might have</p> <p>19 a question in regard to an individual while another</p> <p>20 member wouldn't?</p> <p>21 A Is that possible? Yes. And pigs can fly.</p> <p>22 Anything is possible.</p> <p>23 Q Do you think every ASMP member would check</p> <p>24 an ID for the same -- when presented with a</p> <p>25 particular individual, do you think every ASMP</p>	<p>1 Q And when photographers are trying to get</p> <p>2 model releases, that's their concern, correct?</p> <p>3 A I guess, again, as professionals their</p> <p>4 concern is fulfilling the obligations of the job.</p> <p>5 So...</p> <p>6 Q Which in the commercial context is</p> <p>7 obtaining an image that they can --</p> <p>8 A Provide the client with proper rights and</p> <p>9 clearances to use the images that are produced.</p> <p>10 Q Is it ASMP's position that it's possible</p> <p>11 to determine a person's age by visual observation?</p> <p>12 A I would say not in all cases, no. Some</p> <p>13 people appear younger than others.</p> <p>14 Q And ASMP has not set a cutoff age under</p> <p>15 which its members are required to check IDs,</p> <p>16 correct?</p> <p>17 A Correct. We have no means to compel our</p> <p>18 members to do anything. I guess we're specifically</p> <p>19 limited by the Justice Department in many ways in</p> <p>20 engaging in any form of collective action.</p> <p>21 Q Let's go back to Exhibit 3, Interrogatory</p> <p>22 number 9.</p> <p>23 A (Witness complies.)</p> <p>24 Q In Interrogatory number 9 -- I'll give you</p> <p>25 a minute to look at it. In ASMP's response to that</p>
Page 54	Page 56
<p>1 member would check that individual's ID or not?</p> <p>2 A Again, I would go back to my original</p> <p>3 statement that my members are professionals, they</p> <p>4 need to do what they need to do to fulfill the</p> <p>5 requirements of the job. So again, photographers</p> <p>6 are as risk averse as clients. That being said, my</p> <p>7 position would be if they had any questions, they</p> <p>8 would ask for ID.</p> <p>9 Q So as you were saying, the risk if an ASMP</p> <p>10 member doesn't check an ID when the person -- when</p> <p>11 the individual being depicted in an image is not --</p> <p>12 is under 18 and can't enter into a contract, the</p> <p>13 risk in that context is simply that the photographer</p> <p>14 would not be able to use that image in a commercial</p> <p>15 context, correct?</p> <p>16 A And assuming that it's a commercial</p> <p>17 assignment that he's involved in, that then his</p> <p>18 client wouldn't be able to use the image. There are</p> <p>19 different levels of use within photography.</p> <p>20 So there's the primary use, the</p> <p>21 commissioned use for the job, and then there are</p> <p>22 secondary uses that become available to</p> <p>23 photographers sublicensing and secondary licensing</p> <p>24 of images after the fact. So neither would be</p> <p>25 available if you don't have a valid release.</p>	<p>1 Interrogatory it states: Hundreds of our members</p> <p>2 take photographs of the nude human body and sexual</p> <p>3 conduct. Given that fact, I believe that there are</p> <p>4 more than a thousand images in each of the age</p> <p>5 categories designated above.</p> <p>6 Did I read that accurately?</p> <p>7 A Correct.</p> <p>8 Q And age categories designated above are 18</p> <p>9 to 25; 26 to 35; 36 to 45; 46 to 55; 56 to 65; and</p> <p>10 over 65, correct?</p> <p>11 A Correct.</p> <p>12 Q And this question is asking about</p> <p>13 depictions of sexually-explicit conduct, correct?</p> <p>14 A Actual or simulated sexually-explicit</p> <p>15 conduct.</p> <p>16 Q So this response is essentially saying</p> <p>17 that ASMP members, that there are more than a</p> <p>18 thousand images produced by ASMP members of</p> <p>19 sexually-explicit conduct in each of these age</p> <p>20 categories, correct?</p> <p>21 A Correct.</p> <p>22 Q How did ASMP make that determination?</p> <p>23 MS. BAUMGARDNER: Objection.</p> <p>24 THE WITNESS: I did not make this</p> <p>25 determination, but my judgment would come just</p>

<p style="text-align: right;">Page 57</p> <p>1 from my understanding of how photographers work 2 and what's involved in creating or fulfilling 3 the requirements of any particular assignment. 4 There are generally many more images 5 created than are actually needed to fulfill the 6 specific job requirement. It's just the nature 7 of the way photographers work. They create 8 many images to fulfill the one requirement. So 9 I think that's probably -- so it doesn't take 10 long to get to a thousand.</p> <p>11 BY MS. WYER:</p> <p>12 Q So you understand this response as 13 including every individual image in a single shoot, 14 model shoot, as a separate image?</p> <p>15 A They are separate images.</p> <p>16 Q So the number a thousand is not a high 17 number in this context?</p> <p>18 MS. BAUMGARDNER: Objection.</p> <p>19 THE WITNESS: I would say you are correct.</p> <p>20 BY MS. WYER:</p> <p>21 Q For this response can you be more specific 22 in regard to which age categories have a larger 23 number or fewer images?</p> <p>24 A No.</p> <p>25 Q Do you have any way of making that</p>	<p style="text-align: right;">Page 59</p> <p>1 Q Let's now look at Interrogatory number 10 2 in the same exhibit, which is just the next one 3 down.</p> <p>4 A (Witness complies.)</p> <p>5 Q In the second paragraph of the response, I 6 think fourth sentence states: Photojournalists who 7 are on the road for months at a time are simply 8 unable to maintain and categorize the records as the 9 statutes and regulations require.</p> <p>10 Did I read that accurately?</p> <p>11 A Yes.</p> <p>12 Q What do you mean by this?</p> <p>13 A To my understanding, it means that 14 photographers who travel extensively who may either 15 be in areas of conflict or may simply be out on 16 location for a protracted period of time -- I 17 frequently went out for two, three weeks at a time 18 as an industrial photographer.</p> <p>19 Photographers involved in conflict or 20 other areas sometimes go for months at a time. I 21 don't know how they could possibly fulfill the 22 requirements of this statute, how they would make 23 records available 20 hours a week.</p> <p>24 The simple act of having to record or 25 to maintain all of those records in some type of</p>
<p style="text-align: right;">Page 58</p> <p>1 determination?</p> <p>2 A No.</p> <p>3 Q So you cannot provide us with information 4 that shows the range of ages of individuals depicted 5 in the depictions of sexually-explicit conduct 6 produced by your members; is that correct?</p> <p>7 A State the question again.</p> <p>8 Q You cannot provide us with information 9 that indicates the range of ages of individuals 10 appearing in depictions of sexually-explicit conduct 11 produced by your members?</p> <p>12 A At this time, no, I can't.</p> <p>13 Q Do you have any way of doing that in the 14 future?</p> <p>15 MS. BAUMGARDNER: Objection.</p> <p>16 THE WITNESS: I guess theoretically we 17 could survey our members. I know of no other 18 way to...</p> <p>19 BY MS. WYER:</p> <p>20 Q Do you have any way of requiring your 21 members to respond?</p> <p>22 A No. We're a trade association. We have 23 no force. We're not -- we're not, we're not rights 24 holders. We're not -- we have no compelling force 25 over our members.</p>	<p style="text-align: right;">Page 60</p> <p>1 searchable database while on the road, I think, is 2 incredibly burdensome.</p> <p>3 It's hard enough getting the releases 4 they require, but to have to do all of this extra 5 record keeping and, again, make those records 6 available -- we're dealing with, again, one- and 7 two-man shops who are already extraordinarily 8 burdened by the blessing of digital photography.</p> <p>9 The world said it was going to be 10 better, faster, cheaper. It may be better and the 11 capture may be faster, but the post-production is 12 considerably more burdensome on a photographer 13 today. Previously you shot film and gave it to a 14 client. At the end you gave him transparencies and 15 you were done.</p> <p>16 Now, all that post-production work 17 that was previously done by third parties is now 18 done by the photographer. So the photographer does 19 the retouching, photographer does the file prep, the 20 photographer creates the print files, the output 21 files. And he may or may not be compensated for 22 that work, but he's still got to do it all.</p> <p>23 And so the job doesn't end when the 24 shoot ends. It was much easier when you were 25 dealing with film and transparencies. So things</p>

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<p>1 A Again, I would defer to Victor Perlman, 2 but I'm not sure that he would know either.</p> <p>3 Q Has ASMP issued any press release 4 regarding this litigation or its participation in 5 this litigation?</p> <p>6 A Not that I'm aware of. I think we 7 mentioned it in a -- may have mentioned it in an 8 e-news, but I don't believe we've issued any press 9 release.</p> <p>10 (Exhibit Mopsik-6 was marked 11 for identification.)</p> <p>12 BY MS. WYER:</p> <p>13 Q You've been handed what's been marked as 14 Exhibit Mopsik-6. Do you recognize this?</p> <p>15 A It says it's the -- our list of press 16 releases.</p> <p>17 Q Do you see that this list of press 18 releases goes to the most recent one, March 7, 2013?</p> <p>19 A Mm-hmm.</p> <p>20 Q Actually there's one section of the 21 website called Recent Releases and another that has 22 Prior Releases, so there's another --</p> <p>23 A Right.</p> <p>24 Q -- that starts on page 5, starts again at 25 page 1 because it's from the non-recent releases</p>	<p>1 requirements. Do you understand what that means?</p> <p>2 A No.</p> <p>3 Q That the requirements violate the First 4 Amendment as applied to ASMP?</p> <p>5 MS. BAUMGARDNER: I object. This is a 6 legal question that you're asking him. It's a 7 legal term.</p> <p>8 BY MS. WYER:</p> <p>9 Q Do you understand what I mean by the 10 question?</p> <p>11 A I mean, my understanding would be that 12 you've said we've made a challenge on the basis of 13 the First Amendment as it applies to ASMP members.</p> <p>14 Q So if ASMP were to prevail or were to win 15 on that applied challenge, is there anything that 16 would stop producers from the hardcore adult 17 industry from joining ASMP?</p> <p>18 MS. BAUMGARDNER: Objection.</p> <p>19 Do you understand the question?</p> <p>20 THE WITNESS: Well, is there anything that 21 would -- so you want to know if there's 22 anything that would prevent a producer of 23 hardcore pornography from becoming a member of 24 ASMP if we were to prevail in this 25 constitutional challenge; is that correct?</p>
<p style="text-align: center;">Page 78</p> <p>1 section, correct?</p> <p>2 A Mm-hmm.</p> <p>3 Q And that section goes from December 15, 4 2011, back to November 19, 2008?</p> <p>5 A Okay, I got it.</p> <p>6 Q Are you aware of any press release issued 7 by ASMP regarding this litigation during that time?</p> <p>8 A If there is one in here, I don't recall 9 it.</p> <p>10 Q If there is not one in here, would that 11 indicate there was no such press release?</p> <p>12 A Assuming that the guy who puts them up on 13 the website was doing his job, yeah. I mean, this 14 is the only record we keep of our releases. Is 15 there one in here?</p> <p>16 Q If you want to try to find one -- can you?</p> <p>17 MS. BAUMGARDNER: Can you direct his 18 attention to any particular one?</p> <p>19 MS. WYER: I'm not able to.</p> <p>20 THE WITNESS: I didn't recall one.</p> <p>21 Commented on a lot of other things of 22 significant importance.</p> <p>23 BY MS. WYER:</p> <p>24 Q ASMP has brought and has applied First 25 Amendment challenge to the 2257 and 2257A</p>	<p style="text-align: center;">Page 80</p> <p>1 BY MS. WYER:</p> <p>2 Q You've already indicated that filmmakers 3 who make what could be characterized as hardcore 4 sexually-explicit films could become ASMP members?</p> <p>5 A "Could" is the operative word, yeah.</p> <p>6 There's no restriction in our bylaws that says 7 producers of sexually-explicit materials cannot be 8 members.</p> <p>9 Q Going back to the relationship between 10 ASMP and its membership, are there rules that ASMP 11 has established to govern the conduct of its 12 members?</p> <p>13 A There is a code of ethics on the website. 14 I don't know exactly where it is, but there is one.</p> <p>15 Q Is there any specific role in that code of 16 ethics that prohibits ASMP members from using 17 individuals under 18 in depictions of 18 sexually-explicit conduct?</p> <p>19 A I don't believe that any of the code would 20 specifically state that. It would state that 21 members are to be professional, that they are, I 22 guess -- I don't even know -- I guess it would go 23 without saying that they're expected to uphold the 24 laws of the land.</p> <p>25 And if, in fact, which it is, you</p>

In The Matter Of:

*FREE SPEECH COALITION, INC v
THE HONORABLE ERIC H. HOLDER*

March 16, 2013

*SOUTHERN DISTRICT REPORTERS
500 PEARL STREET
NEW YORK, NY 10007
212 805-0330*

March 16, 2013

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1	Nitke	Nitke
2	in the way that producers --	photographs on the adult film sets do you think?
3	A. No.	A. So you are asking how many were after
4	Q. -- checked the ages of performers?	say '95 as opposed to before? I am not sure I
5	A. No. The producers were always	understand.
6	scrupulous. It was always a very big deal.	Q. Well, just how many were from that
7	Q. They always checked the ID cards even	period when you were taking the photographs on
8	before 2257 went into effect, is that right?	the adult film sets, which you have said
9	A. Yes.	occurred between 1983 and sometime in the
10	Q. And they always had model releases	mid-'90s?
11	even before 2257?	A. Do you want to give me a minute to see
12	A. Absolutely.	if I can calculate this out again?
13	Q. Let's look at interrogatory 15. It is	Q. If you want to.
14	on page 4. We are just looking at the answer I	A. Yes, could I have a pencil and paper.
15	don't know if you need to look at the question	MS. BAUMGARDNER: Would it be easier
16	to understand the question?	to do it backwards from since '95 on, when 2257
17	A. All right.	took effect? I mean, Kathy, it is your
18	Q. In the answer you say, "I have created	question.
19	a large body of sexual artwork from 1982 to the	THE WITNESS: I just have to go back
20	present that involves approximately 425 people."	over how I figured it out, so I would need a
21	Correct?	pencil and paper and a few minutes.
22	A. Correct.	MS. BAUMGARDNER: Can we go off the
23	Q. Did I read that correctly?	record then and let her make the calculation.
24	A. Yes.	MS. WYER: Sure.
25	Q. How did you determine the number	(Discussion off the record)
	Page 18	Page 20
1	Nitke	Nitke
2	approximately 425?	Q. Let the record reflect that we have
3	A. I guessed.	taken a break and Ms. Nitke has done a
4	Q. How did you guess?	calculation on paper.
5	A. I just thought over how many people	Could you explain what process you
6	might have been in 300 movies, plus the work I	have just gone through and what result you have
7	did after that.	reached?
8	Q. So you have 300 movies. How many	A. Yes. I am guessing that on the
9	individuals in each movie do you think?	hardcore movies I worked on, which would be in
10	A. A lot of them are in more than one	New York from 1982 to 1991, I'm guessing there
11	movie, right, making it a little bit difficult	was approximately 50 to 100 people who were in
12	to be accurate.	that pool of actors that worked regularly at
13	How did I break it down? I don't	that time.
14	remember.	Then I'm also guessing that from 1991
15	Q. So what would you say now about how	to 1994, when I worked in fetish porn movies, we
16	many individuals?	shot a lot more movies in a smaller time, and
17	A. I would probably say the same thing.	I'm guessing that there were also around 50 to
18	Q. How would you reach that figure now?	100 people that were performers in that group.
19	A. I would guess.	Then when I began photographing in the
20	I mean outside of spending a couple of	SM community, I think I shot around 150 people
21	days, you know, trying to look at every title	for my own artwork at that time.
22	and remember who was in it, how would I do it	Q. What time period was that?
23	other than guessing.	A. That would be -- and that's the
24	Q. So how many of the 425 people were	black-and-white work -- and that would be from
25	from that period when you were taking	1994 to 1998 or 1999.

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	Page 21	Page 23
1	Nitke	Nitke
2	Then I did another smaller body of	by director?
3	work called Illimunata, and that was from 1999	3 A. No, it's by genre. At the time they
4	to 2007, and I think I probably added another 30	4 never had sex, they didn't have genital sex if
5	to 50 people on top of the original 150 that I	5 it was a fetish movie. I don't know if that's
6	was shooting in that time period.	6 still true, but at that time that was true. And
7	Then, most recently, from 2007 to now,	7 rather than have sex they would do various BDSM
8	there are probably about 20 models that I have	8 activities.
9	shot that could possibly fall within this	9 Q. Why were you working only in the
10	grouping. They're mostly doing bondage, and I	10 hardcore type movies from 1982 to 1991 and then
11	don't know whether they really fall into the	11 1991 to 1994 you were only working in fetish
12	category you are talking about or not.	12 movies?
13	So that adds up to 370 to 470 people,	13 A. That just reflects who was hiring me.
14	that range.	14 Q. So the same people were not doing
15	So that's how I came up with the 425.	15 both? Some people were doing --
16	Q. You have a method.	16 A. No. Some people were doing both. It
17	A. I have a method.	17 is just how I break down my own, my artwork
18	MS. BAUMGARDNER: So that wasn't a	18 categories.
19	guess. That was actually pretty good.	19 Q. The same people who were hiring you to
20	THE WITNESS: I still think it's a	20 do the still shots for the hardcore movies, did
21	guess, but yes.	21 they later hire you to do work on fetish movies?
22	Q. The period from 1982 to 1991, you	22 A. In some cases.
23	would describe that as the hardcore films	23 Q. But for some reason it just turned out
24	period?	24 that all of the fetish movies were in the '91 to
25	A. Yes.	25 '94 period?
	Page 22	Page 24
1	Nitke	Nitke
2	Q. Are you saying that there was like a	2 A. Yes.
3	pool of regulars during that time?	3 Q. Just kind of random or --
4	A. Yes.	4 A. I am not sure what you are asking.
5	Q. Were you working only for certain	5 Q. I am just trying to understand the
6	directors?	6 progression of your career. I guess I don't
7	A. Yes.	7 understand why all of the work that you got
8	Q. So was this pool for certain	8 would be in one category and then suddenly be in
9	directors, or was this pool general to the	9 a different category.
10	industry?	10 A. The X-rated industry pretty much moved
11	A. I don't know. They were the people I	11 out to Los Angeles in the late '80s. So the
12	knew.	12 amount of work I was getting on X-rated movies
13	Q. And the fetish porn period that you	13 in New York started to dwindle.
14	described occurred from 1991 to 1994, how was	14 In the early '90s, there was an
15	that different from the hardcore porn industry,	15 expansion of the fetish movie field, and there
16	I mean just in terms of the industry that you	16 were some producers in New York still who made
17	were working within?	17 fetish movies, so they started hiring me. It
18	A. It is a different segment of the	18 was kind of a geographical thing, because there
19	industry.	19 was almost no hardcore movies being shot in New
20	Q. Does that mean different -- I mean how	20 York in the '90s.
21	do you know if it's one or the other?	21 Q. Then in 1994 or the mid '90s, did the
22	A. Well, they do different things in the	22 fetish porn industry also move?
23	movie.	23 A. No. Let's see what happened there. I
24	Q. So do different directors focus on a	24 was asking for higher pay by the mid '90s and
25	different category, hardcore or fetish? Is it	25 the people I was working for didn't want to pay

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1 Nitke 2 more, so I just gradually quit working for them. 3 Q. Then was it after that time that you 4 began photographing SM? You described that 5 period as 1994 to 1999? 6 A. Correct. 7 Q. How did you transition from, or do you 8 see them as just a new thing that you started 9 doing the BDSM? 10 A. Yes. 11 Q. How did you start doing that? 12 A. I met some people in the BDSM world 13 and started photographing them. 14 Q. How did that happen? How did you 15 start photographing them? 16 A. I asked them. They let me photograph 17 them. 18 Q. What kinds of contexts were you in 19 when this happened? 20 A. Again, I'm just not sure, like what -- 21 Q. Were you walking down the street and 22 you saw a person and you asked to photograph 23 them? There must have been some -- 24 A. I was introduced to some people at a 25 group called the Eulenspiegel Society here in	Page 25 1 Nitke 2 speaking of the BDSM community, by the way, 3 let's clarify, what does BDSM stand for? 4 A. I knew you were going to ask that. 5 BDSM is bondage, discipline, dominance 6 submission, sadomasochism. 7 Q. I think I get that. 8 A. You can see the BD, bondage 9 discipline, and the DS, DM, the SM, 10 sadomasochism. It is a clever acronym. 11 Q. The answer says, "This is a tightly 12 knit community where everybody knows each other 13 and where no one under 18 is ever allowed to 14 join any of the groups or attend any events." 15 Is that correct? 16 A. Correct. 17 Q. Why do you say that the community is 18 tightly knit? 19 A. It is a subculture where the people 20 just are very close. They know each other. 21 They are very intimate with each other. When 22 someone new comes into the group, everyone kind 23 of looks them over to see if they like them. So 24 they are just tightly knit and close. 25 Q. How many people are in the community?
Page 26 1 Nitke 2 New York, and I started going to their meetings 3 and I met a lot of people there and I went to 4 their parties and things like that. 5 I formulated a concept that I wanted 6 to photograph. I spent about six months just 7 being with the people, and then I formulated 8 something. I wanted to show them as romantic 9 people who were expressing love for each other. 10 So I started to talk to them about 11 that and whether they would let me photograph 12 them in a private setting, like their own homes 13 or whatever, and some of them agreed and I 14 started doing that. 15 Q. Let's look at Interrogatory 8. I 16 think this is a different exhibit. 17 A. You mean not this one? 18 Q. Yes. It is a different set. 19 MS. WYER: I will mark this at Nitke 20 2. 21 (Nitke Exhibit 2 marked for 22 identification) 23 MS. BAUMGARDNER: Thank you. 24 Q. On page 5 you say in the response to 25 interrogatory 8 where the answer reads --	Page 26 1 Nitke 2 A. The Eulenspiegel Society at that time 3 had close to a thousand members in New York -- 4 or the Eulenspiegel Society is in New York, the 5 membership was not all New York. Some were in 6 other parts of the country, but they had about a 7 thousand members. 8 Q. Do you know what "Eulenspiegel" means? 9 A. I forget. It is from I believe an 10 opera called Till Eulenspiegel. What does that 11 character do? I forget. It is a German opera 12 and there's this character named Till 13 Eulenspiegel who does something or another and 14 they took their name from that. 15 Q. When you say the BDSM community, are 16 you talking about the Eulenspiegel Society? 17 A. Well, that was my main point of 18 contact with the community. There are groups 19 like that, but smaller ones, around the country. 20 Q. So you think there were a thousand 21 members of the Eulenspiegel Society? 22 A. At that time. I think there were 900 23 and some at that time. 24 Q. In New York? 25 A. They weren't all in New York, but the

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	Page 53	Page 55
1	Nitke	Nitke
2	Q. Why do you know the --	It seems like there might.
3	A. Because one of the models, I just	Q. I don't know if the C.M. is the same
4	remembered her age.	on --
5	Q. Are you able to make a complete	A. Oh, no. This is set up by -- oh, of
6	breakdown of all of the ages of those	course, that's right. I scrupulously set it up
7	individuals?	by, each model is in their group. Duh. OK.
8	A. I think I did.	Sorry. Yes. That's right. It all comes back
9	Q. Have you provided that to us?	to me. It was a lot of work.
10	A. I think so.	Q. So there are 27 models?
11	MS. WYER: I'd like to mark this as	A. Are there? OK.
12	Nitke 3.	Q. Identified here, right?
13	(Nitke Exhibit 3 marked for	A. Right.
14	identification)	Q. I got to 27 here.
15	Q. I'm handing you what's been marked as	A. OK.
16	Nitke 3.	Q. This is from January 1, 2005, to
17	Do you recognize this?	December 31, 2009?
18	A. Yes.	A. Correct.
19	Q. It's titled "Model List."	Q. So this starts in the period when you
20	A. Right.	were working on the Illumunata series, and then
21	Q. Is this something you provided to us	it covers part of the current, the Smooth Hotel
22	in discovery?	project?
23	A. Uh-huh.	A. Right.
24	MS. BAUMGARDNER: You have to answer	Q. So where is the cutoff? Would that
25	verbally.	be --
	Page 54	Page 56
1	Nitke	Nitke
2	A. Yes. Sorry.	A. Probably around 2008. I'm trying to
3	Q. What does this list represent?	remember.
4	A. I believe what I was being asked is	MS. BAUMGARDNER: Cutoff of what, just
5	the date of birth and how many images I shot of	so I understand.
6	people in a certain -- this is that from 2005 to	MS. WYER: Between the two projects.
7	2009, where I was asked to break down the models	A. That's wrong.
8	by their birth date.	Q. Between the Illumunata --
9	Q. I haven't counted how many there are.	A. I can tell by the titles. Polysexuals
10	Let's see. 26. If I'm counting correctly there	is the Smooth Hotel. So, yeah, 2008 is correct.
11	are 26 models identified here?	That's when I started that. These are all the
12	A. No. Because some of those are	other ones. Polysexuals, 2008. Yeah, 2008.
13	repeats.	2007 on this is the cutoff, and 2008 begins the
14	Q. I didn't count every line.	new project.
15	A. Are there 26 different models? OK.	Q. So anything where the title is
16	Do you want me to verify that? Can I just trust	Polysexuals, that refers to the Smooth Hotels
17	you?	project?
18	Q. If you want to count, you can go	A. Yes. So there are 11 models here.
19	ahead.	Q. You mean for the Smooth Hotels?
20	A. That takes a while to do, though. OK.	A. Oh, no.
21	Q. Now I'm getting 27. I have numbered	Q. Then there's one, R.K., who appeared
22	them on the marked exhibit if you want to look	in both projects.
23	at it. Did you want to look at it?	A. He was in both.
24	A. It is a better method than mine.	Q. So starting at D.P. at the bottom of
25	I mean, I guess accuracy matters. OK.	the page, there's ten from D.P. to L.C. on the

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Page 57	Page 59
<p>1 Nitke 2 next page, and then R.K., so that's a total of 3 11 -- 4 A. Correct. 5 Q. -- from the Smooth Hotels project. 6 Then there would be 16 plus R.K. 7 again. 8 So that's 17 from the Illuminata 9 project. Do you think that's correct? 10 A. Correct. 11 Q. This is a complete list of all of 12 the -- 13 A. There's one off, though. The 2007 Max 14 and Too is kind of in neither one. But they're 15 kind of, they are in an aborted idea that I 16 never completed. 17 Q. So even though your BDSM projects 18 involved around 200 individuals from the period 19 of 2005 through the end of the project you, only 20 photographed 17 of those during that time 21 period, is that right? 22 A. I'm sorry. Ask it again. Can you ask 23 it again. 24 Q. The total number of individuals 25 involved in the projects involving the BDSM</p>	<p>1 Nitke 2 A. Correct. 3 MS. WYER: I will mark this as Nitke 4 4. 5 (Nitke Exhibit 4 marked for 6 identification) 7 Q. I am handing you what's been marked as 8 Nitke 4 to the witness. This is titled -- 9 A. I'm sorry. Before we start a new 10 thing could I take a bathroom break. 11 Q. Sure. 12 (Recess) 13 MS. WYER: Let the record reflect that 14 we just took a short break and now we're back. 15 Q. Previous to the break I handed you 16 Exhibit Nitke 4, titled Shoot List. 17 Do you recognize this? 18 A. I do. 19 Q. This was something that you provided 20 to us? 21 A. Yes. 22 Q. What does this represent? 23 A. These are the shoots that I did from 24 2005 through 2009. 25 Q. Are all of the individuals listed on</p>
<p>1 Nitke 2 community which were the black-and-white project 3 and the Illuminata project, the total number 4 that you identified was 200? 5 A. Maximum. 6 Q. Maximum. But during the period from 7 January 1, 2005 through the end of that project, 8 the Illuminata project, you only photographed 16 9 of them? 10 A. Correct. 11 Q. Maybe 15? 12 A. Right. 13 Q. Because M.R. and P.C. were outside of 14 that? 15 A. Right. 16 Q. Do you believe that this list of 15 is 17 representative -- I mean it is hard to say that 18 this list is representative of -- through this 19 period it covers the end of one project and the 20 beginning of another project, right? 21 A. Right. 22 Q. But this is a complete list -- 23 A. Correct. 24 Q. -- of work that you photographed for 25 the purpose of publishing?</p>	<p>Page 58</p> <p>1 Nitke 2 the model list somewhere on the shoot list also? 3 A. Yes. 4 Q. And then on the shoot list you also 5 indicate that there were, for example, the first 6 line in February 2005 at the Winter Fire BDSM 7 event, was that one of the conferences? 8 A. Yes. 9 Q. And you took 953 shots of around 100 10 models for the models' private use? 11 A. Correct. 12 Q. That's what you described previously, 13 where you took this other set of photographs 14 that was not to be published, so you didn't keep 15 2257 records for those? 16 A. Correct. 17 Q. Just to understand exactly, was this 18 like at a baseball game where there is a 19 photographer who takes your photograph and then 20 asks you if you want a copy and then you order a 21 copy, or was this something different? 22 A. No. Well, again, they all operated 23 maybe a little differently. But usually I would 24 be at the event available to take pictures, and 25 I would give the shots to the event coordinator</p> <p>Page 60</p>

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<p>1 Nitke 2 so that they could share them with people as 3 needed. Sometimes people would ask me to write 4 a CD for them, and there would be a small charge 5 for me to do that, but I would have to edit out 6 their photos for them. But other times the 7 event people would just do it for them. 8 Q. In those cases you would provide these 9 photographs to the event coordinator? 10 A. Yes. 11 Q. You said you didn't charge for your -- 12 did you receive a fee for when you were -- 13 A. No. They would let me go to the event 14 for free in return for my taking pictures for 15 people. 16 Q. Then you would give the photographs of 17 the event, including photographs of individuals, 18 to the event coordinator and then that person 19 would just allow the individuals to get copies? 20 A. Correct. 21 Q. So for this one involving M.R. and 22 P.C., you listed the event -- 23 MS. BAUMGARDNER: Can you give the 24 date. 25 THE WITNESS: 2007.</p>	<p>1 Nitke 2 Q. OK. Well -- 3 A. When you used the words "sexually 4 explicit" are you meaning? 5 Q. I am meaning whatever fits within the 6 definition, that falls under the 2257 7 requirements. 8 A. OK. Then this is a complete list of 9 that. 10 Q. OK. So for the Smooth Hotels project 11 you said there were, you think, 20 individuals 12 involved in photographs in that project where 13 the 2257 requirements may be implicated and 11 14 of them are on this model list, right? 15 A. That's right. 16 Q. So there are nine other individuals 17 who you must have photographed after December 18 31, 2009? 19 A. There may be less than 20. I think 20 20 is the maximum. 21 Q. Do you know the ages of the others? I 22 mean, would it be possible to get just a list of 23 whatever, since it is a small number of 24 people -- 25 A. Sure.</p>
Page 62	Page 64
<p>1 Nitke 2 Q. The September 2007 Dark Odyssey BDSM 3 event? 4 A. Correct. 5 Q. That's where the M.R. and P.C. 6 individuals, the Max and Too photographs were 7 taken? 8 A. Right. 9 Q. You said this was part of a project 10 that you never completed? 11 A. That's correct. I might use them for 12 something one day, but -- 13 Q. Is this a complete list of all of the 14 occurrences where -- I don't know what to call 15 it -- all of the times when you took photographs 16 involving depictions of sexually explicit 17 conduct from January 1, 2005, to December 31, 18 2009? 19 A. It is a complete list of any shoots 20 that I did that I think could possibly apply to 21 the 2257 law. 22 There's a lot of other shoots that I 23 did that just would have no application, but in 24 most of these cases they're not sexually 25 explicit. They just have some SM content.</p>	<p>1 Nitke 2 Q. -- could we just get the ages of those 3 up to nine? 4 MS. BAUMGARDNER: We will have to talk 5 about that. 6 MS. WYER: OK. 7 Q. It seems like your work is focused 8 kind of thematically. So we have the photos on 9 the porn sets in the '80 through the mid '90s, 10 and then there's the BDSM photos from around the 11 mid-'90s through 2007, and now you're on a new 12 project. 13 Have you taken any other photos 14 implicating 2257 other than those projects that 15 we've already talked about? 16 A. No. 17 Q. After you are done with the Smooth 18 Hotel project, you could go on to a different 19 project? 20 A. Yes. 21 Q. But you don't even know what that is 22 now? 23 A. That's right. 24 Q. So it could involve a completely 25 different population of people?</p>

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1	Nitke	1	Nitke
2	A. It could.	2	it?
3	Q. So you have no way of predicting today	3	A. I have an original and three copies.
4	what group of people you might photograph in the	4	Q. The one that you keep in the storage
5	future or where the photographs might implicate	5	locker is just a backup?
6	2257, is that right?	6	A. Yes.
7	MS. BAUMGARDNER: Objection. Go ahead	7	Q. Do you work only with paper copies?
8	and answer.	8	A. Correct.
9	A. I have no way of predicting. Yeah, I	9	Q. You don't have a digital filing
10	guess that's true.	10	system?
11	Q. Let's go back to the one that looks	11	A. No.
12	like this, what's been marked as Nitke 2, which	12	Q. Where are the original copies, the
13	are the responses to the first set of	13	originals that are not copies?
14	interrogatories. That one.	14	A. Some are in my home and some end up in
15	A. OK.	15	storage after I have all the copies made.
16	Q. Let's look at interrogatory 10, which	16	Q. Do you really have like two backups?
17	is starting on page 6.	17	You have the originals and a backup copy that
18	A. OK.	18	you just keep?
19	Q. I am actually looking at the top of	19	A. I have the original model release and
20	page 7.	20	the driver's license and the 2257 form. I make
21	MS. BAUMGARDNER: Why don't you read	21	three copies of it when I do the filing, when I
22	through it completely, and then Ms. Wyer can ask	22	set up the files.
23	you questions about it.	23	As I'm setting up the files, I run off
24	THE WITNESS: OK.	24	three copies out of my fax machine. I put the
25	A. OK.	25	copies in folders, two sets of those folders for
Page 66		Page 68	
1	Nitke	1	Nitke
2	Q. Do you remember preparing this	2	2257 files. I have two sets of that. Then
3	response?	3	there's another copy that goes in like the
4	A. Yes.	4	folder that has the shoot in it. Then
5	Q. You have now looked over your	5	eventually either a copy or an original lands up
6	responses. Has that refreshed your memory about	6	in my storage locker when I have time to get it
7	what you said?	7	up there.
8	A. Yes.	8	Q. So the copy that goes with the shoots,
9	Q. I am just looking at the top of page	9	that's not part of the 2257 records? That's
10	7, where you say, "In order to comply with 18	10	just your regular -- is that right? That's just
11	U.S.C. 2257 I make triplicate copies of all	11	part of your regular --
12	forms and required identification, which I keep	12	A. No. Well -- meaning? I'm not sure.
13	in my home."	13	Q. Do you keep a copy of these documents
14	Did I read that accurately?	14	just as part of your regular business records
15	A. Yes.	15	also?
16	Q. Why do you keep triplicate copies?	16	A. No, why would I -- no. The only thing
17	A. I have the original copy. Then I have	17	I would do for my regular business records is
18	a copy, which is in the filing system that I	18	have a model release.
19	have set up, which cross-references the models	19	Q. So do you keep a copy of the model
20	with the alias names and all of that stuff.	20	release with your business records?
21	Then I have a second copy of that filing system	21	A. Yes. But if 2257 laws might apply,
22	in case anything happened to the first copy of	22	then I just have it all.
23	it, and then I also have a set of the records	23	Q. I wasn't clear what the third copy was
24	that go into my storage locker.	24	or the second copy. You said you have the
25	Q. So you actually have four copies of	25	original, and for two of the copies that you

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1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	Page 97	Nitke	Q. Did the publisher work with you in making that statement?	A. No. Because I'm the publisher.	Q. It is self-published?	A. Yes.	Q. Is Kiss of Fire also?	A. No. That was published by a publisher.	Q. Does that book have images from the BDSM black-and-white project?	A. Yes.	Q. That was after 1995, so you had 2257 records for all of the images in that book?	A. That's correct.	Q. What was the publisher's involvement in putting a statement in that book?	A. The publisher is a German publisher. They weren't aware of the law, but I told them we should put that statement in for American distribution.	Q. So what is your understanding of the requirements for these statements based on?	A. It is just based on what I understand, that you have to have a statement saying where	Page 98	Nitke	the records are kept, stating that you have the records and where they're kept, and I got the wording from somebody. I don't know.	Q. Did you do online research to try to figure this out?	A. I asked around.	Q. Was it as a result of asking around that you got the impression that you could not publish pre-1995 work in a book that also had post-1995 work covered by 2257 without going back and getting 2257 records for all of the pre-1995 work?	A. Correct.	Q. Do you remember who told you that?	A. No, I don't.	Q. But you understood that you could publish the pre-1995 work separately as long as it didn't have any post-1995 work in it in the same book?	A. Yes. That's my understanding. I hope it's correct.	Q. You could publish the post-1995 work separately with the 2257 --	A. Yes. My understanding was when I was	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	Page 99	Nitke	going to publish all four bodies of work, my understanding was that I would have to actually publish it in two volumes, before and after 2257.	Q. So you thought you could publish the whole compilation, but in two separate volumes?	A. That was my understanding, yes.	Q. So other than what you talk about in the response to interrogatory 10, is there anything else about the 2257 requirements that is a problem in your view?	A. Wow. That is a great question. Actually, everything about the 2257 law is a problem to me.	I would never photograph anyone under the age of 18 doing anything sexual or SM. I don't know a single person who would do that. It's completely and totally against the law. It's against my moral compass. The person isn't of age. They are not old enough to consent to it. It just would never happen in my lifetime or anyone I know.	I resent the law to be honest. I totally resent it. It's just something that --	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	Page 100	Nitke	it is just so not what I would ever do. It's almost like the law is accusing me of being a kiddy porn person unless someone holds my hand and makes me fill out a bunch of forms.	The other thing I resent is that the law doesn't protect children, because anyone could be fooled by a fake ID anyway. And I think that my own system of knowing the people I photograph and making sure that I ask about them, that I use my judgment, that I talk to other people about who they are, I think is a far better system than this kind of regulation that isn't going to really accomplish protecting minors.	I think if I thought about it I could come up with even more things that I resent. But I think those are the biggest issues, is that this is supposed to protect children and I don't think it does.	Q. You described your own practices and that you do certain things to try to ensure or that make you feel that you are certain without checking IDs that individuals are over 18, is that right?
---	---	---	---	---	---	---	---	---	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	---------	-------	--	-----------------------------------	--------------------------	---------	--------------------------	---	--	---------	---	--------------------	--	---	---	--	---------	-------	--	--	--------------------	--	-------------	---------------------------------------	-----------------	--	---	---	---	---	---	---	---	---	---	---	---	---	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	---------	-------	--	---	------------------------------------	--	---	---	---	---	---	---	---	---	---	---	---	---	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----------	-------	---	--	--	--

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1 Nitke 2 Q. This question asked, subsection a of 3 this question was asking how much money you have 4 spent per year for each of the past ten years 5 creating visual depictions of sexually explicit 6 conduct, excluding any time spent complying with 7 the 2257 requirements. 8 A. OK. 9 Q. Did I indicate that accurately? 10 A. That's correct. 11 Q. In the answer on page 4 when you say, 12 for example, that you are still at a loss on the 13 books, are the amounts listed in response to 14 interrogatory 14a, do those reflect your 15 expenses for those books? 16 A. No. 17 As I understood that question, as I 18 understood it, the question asked how much it 19 cost me, how much I spent creating visual 20 depictions, which I took to mean taking the 21 pictures. So what I added up was buying film, 22 renting cars to travel, if I had to pay a 23 location fee or something like that. That's 24 what these numbers are. 25 I didn't think that question applied	Page 117 1 Nitke 2 teaching? 3 A. Yes, I do. I forgot. I do teach 4 photography. Thank you. 5 Q. Are you teaching now, currently? 6 A. I am. I teach a class at School of 7 Visual Arts. 8 Q. How long have you done that? 9 A. I think I'm close to 20 years. 10 Q. Are you on the faculty there? 11 A. I am. 12 Q. I don't know what kind of faculty 13 system they have, but are you on the regular 14 faculty? 15 A. I am in the continuing ed. faculty. 16 Q. Other than teaching and producing the 17 images that we have been talking about, is there 18 another aspect of your photography work? 19 A. Yes. 20 Q. What is that? 21 A. I work on television sets, taking 22 publicity shots on set, and I do corporate 23 photography. I have photographed lawyers at big 24 firms. And I do some, a tiny bit of event 25 photography, and I should add a little bit of
Page 118 1 Nitke 2 to publishing costs for a book, so I didn't put 3 that in here. 4 Q. OK. 5 A. Did you want it? Was it supposed to 6 be? 7 Q. No. I just wanted to understand how 8 you did that and what that meant. 9 A. OK. 10 Q. We have been talking until now about 11 your work producing images of sexually explicit 12 conduct covered by 2257, correct? 13 A. Correct. 14 Q. Where does that fit within your work 15 in general? 16 First of all, do you make your living 17 from photography? 18 A. I do. 19 Q. Is that the only income-producing 20 activity that you are engaged in? 21 A. Photography? 22 Q. Yes. 23 A. Yes. 24 Q. Do you have any related kinds of 25 activities that generate income, such as	Page 118 1 Nitke 2 fashion. I would like to do more, but I do a 3 little bit. 4 MS. WYER: I am marking another 5 exhibit as Nitke 11. 6 (Nitke Exhibit 11 marked for 7 identification) 8 Q. Do you recognize this? 9 A. Oh, Project Runway, absolutely. 10 MS. WYER: Let the record reflect that 11 I have marked Nitke 11 and handed it to the 12 witness and the witness's counsel. 13 Q. This is a document from the website 14 IMDb.com, correct? 15 A. Oh, correct, yes. 16 Q. Do you know what this is? 17 A. I do. It is so funny. 18 Q. Are you familiar with the website 19 IMDb.com? 20 A. I am. 21 Q. Could you explain what it is? 22 A. It is a website that lists credentials 23 of people who work in film and television. 24 Q. The individuals who are working, do 25 they provide the data for those entries

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1 Nitke 2 themselves, or does someone else compile and 3 publish this information? 4 A. It is my understanding that anyone can 5 go in there and put in people's credentials. I 6 don't know if they have some system for checking 7 whether they're accurate or not. 8 Q. Did you make this entry? This is an 9 entry that lists your name, correct? 10 A. Correct. 11 Q. Have you seen this before? 12 A. I have. I haven't looked at it 13 lately, but I have seen it. 14 Q. Did you make this entry yourself? 15 A. Which one? 16 Q. Did you post all of this information 17 on IMDb.com yourself, or did someone else put 18 this up here? 19 A. Someone went into IMDb and put in as 20 many of my porn credentials as they could find. 21 Q. Oh, really? 22 A. I did not enter them. I went in and 23 added a bunch of my mainstream credentials. And 24 I haven't looked at it in, I don't know, years. 25 Q. So you can't vouch for the accuracy of	Page 121 1 Nitke 2 A. Correct. 3 Q. Is this a website that you maintain 4 yourself? 5 A. It is. 6 Q. Do you actually manage the content of 7 the website yourself? 8 A. I do. 9 Q. This page is under the biography tab 10 or something on the website, right? 11 A. Right. 12 Q. And this lists your -- how would you 13 describe it? 14 A. It is my biography or my résumé. 15 Q. Is it a selective résumé? 16 A. It is a selective résumé. 17 Q. For what purpose? 18 A. It is aimed at the art gallery world. 19 Q. What is your purpose in having a 20 website? 21 A. Making my work known. 22 Q. Is that in the interest of selling it? 23 A. Hopefully, someday. 24 Q. Is it part of the kind of business of 25 being a photographer that you are trying to
Page 122 1 Nitke 2 every single entry on here, is that right? 3 A. I can look at it and tell you. 4 Q. You don't need to. 5 A. It looks accurate. I don't know where 6 they gather everything, but this looks accurate. 7 I don't have any problem with it. 8 Q. This refers to you? 9 A. That's me. 10 Q. Do you know if the IMDb website is 11 used by potential employers who are looking to 12 hire a photographer? 13 A. I suspect that it might be, but I 14 don't know. 15 MS. WYER: I am marking another 16 exhibit, Nitke 12. 17 (Nitke 12 was marked for 18 identification) 19 Q. I have marked as Exhibit Nitke 12 a 20 document titled Barbara Nitke Photography with a 21 URL at the bottom that begins with 22 www.barbaranitke.com. 23 Do you recognize this document? 24 A. I do. 25 Q. Is this your website?	Page 122 1 Nitke 2 disseminate your work? 3 A. Well, this website, barbaranitke.com, 4 is aimed at letting people know about my artwork 5 and hopefully finding an art gallery that might 6 want to sell it, which I don't currently have. 7 So the purpose of it is to get the work known in 8 the world and hopefully one day sell the work. 9 Q. Do you have an agent? 10 A. No. 11 Q. You said you don't have a gallery that 12 represents you? 13 A. Correct. 14 Q. For this other kind of work that you 15 do with the -- I always lose track of what 16 things are called -- the work on the TV shows? 17 A. Television stills work. 18 Q. Television stills work, how do you get 19 those jobs? 20 A. I maintain a separate website that's 21 aimed at that group of people that might hire me 22 for that, but most of the work is word of mouth. 23 Q. What is the website that you maintain 24 for that? 25 A. Awesomestills.com.

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1 Nitke 2 Q. So you don't think you can say 3 accurately the specific age of this person? 4 A. I just don't want to take a guess at 5 it. 6 Q. Do you think that you can say within a 7 ten-year range what you think? 8 A. My fear is that it is a trick question 9 to be honest with you, so I just don't want to 10 go there. 11 Q. How could it be a trick question? 12 A. Well, if she's 16 but she looks 30, 13 and I say she looks 30 and she's not, that would 14 be a bad reflection on my ability to guess 15 people's ages, so I just don't want to take a 16 guess. I don't know anyone that knows her. I 17 don't know her. I have never seen her ID. I 18 just don't want to guess at it. 19 Q. So is this consistent with what you 20 have said about the way you practice, that you 21 don't rely on appearance? 22 A. Yes. 23 Q. So, without knowing someone and 24 looking at their ID, you don't feel 25 comfortable --	Page 145 1 Nitke 2 stake in it as I the photographer do. 3 Q. Do you think that law enforcement has 4 a stake in knowing the age of individuals in 5 pictures like this? 6 MS. BAUMGARDNER: Objection. 7 A. I can't wrap my head around it. I am 8 not sure I know what you mean. 9 Q. You said that as a photographer you 10 feel that there's too much at stake to guess 11 someone's age in an image like this just based 12 on looking at the image? 13 A. Correct. 14 Q. I assume that that's because if the 15 individual were under 18 it would be child 16 pornography? 17 MS. BAUMGARDNER: Objection. 18 Q. Is that why? 19 A. Taking the term "child pornography" 20 out, it would be illegal for me to photograph 21 someone -- I guess you could call that a sexual 22 situation, so it could be in an illegal area for 23 me. 24 Q. For someone like an officer of the law 25 who is charged with enforcing those laws, do you
Page 146 1 Nitke 2 A. I just think there's too much at stake 3 in an issue like that. And I didn't mean 4 anything insulting about the trick question 5 remark. You know, I am just being candid. 6 Q. Well, do you think that you would be 7 any worse at determining someone's age than 8 someone else by looking at an image? 9 A. It depends on who the someone else is. 10 I mean, if you are talking about a casual viewer 11 who has nothing at stake by guessing someone's 12 age, that's kind of a different frame of 13 reference than me, a photographer who might have 14 taken that picture. 15 Q. Did you take this picture? 16 A. No. But I'm saying, you know, if 17 you're asking me in my role as a photographer 18 who might possibly take a picture like this, 19 then I just don't want to go there with 20 guessing. If it is a viewer who is looking at 21 it just to enjoy looking at it, one would assume 22 that viewer is going to say, yeah, that is a 23 mature person, you know, wow, it's cool to look 24 at that picture. I'm not looking at a child. 25 But that viewer doesn't have the same	Page 146 1 Nitke 2 think that they also have a stake in making sure 3 of the ages of these individuals? 4 A. I think where I'm having -- I am 5 trying to figure out why I'm having difficulty 6 with that question. I think it is because I 7 don't understand the role of the law enforcement 8 people that I can't figure out how to answer the 9 question. Are there law enforcement people that 10 look at images like this all the time to figure 11 out if there's anyone underage or -- I just 12 don't know how their side of it works, if that 13 makes sense. I don't know how they go about 14 what they go about. I would have assumed that 15 they would have a complaint that they would 16 follow up on. 17 Q. So your assumption would be that they 18 would only investigate instances of underage 19 performers, underage individuals being depicted 20 over an act that has happened? 21 MS. BAUMGARDNER: Objection. 22 A. Well, I don't know how that side of it 23 works. I mean I just don't know. 24 MS. WYER: I will take this back. 25 Q. Let's go to interrogatory No. 7. That

In The Matter Of:
Free Speech Coalition Inc. v.
The Honorable Eric H. Holder, Jr., Attorney General

Carol A. Queen, Ph.D.
April 18, 2013

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<p style="text-align: right;">Page 13</p> <p>1 MS. BAUMGARDNER: I don't know yet. 2 MR. SCHWARTZ: Okay. Well, I'm going to try to 3 remember to ask you. At the end I'll probably forget. 4 MS. BAUMGARDNER: I'll try to remember. 5 MR. SCHWARTZ: Yeah, but I'd like to just get 6 that on the record. 7 BY MR. SCHWARTZ: 8 Q. But what we're talking about there, there's 9 a -- your lawyer will decide at the end whether you have 10 an opportunity to read and review what happened here 11 today before it goes to final. If your lawyer decides 12 that that's something you want to do, you'll take a look 13 at it. If you need to make any changes to it, you can, 14 with the help of your lawyer, to make sure everything is 15 accurate. 16 But just so you know, if there's any 17 significant substantive changes to your testimony, we 18 may need to come back and do another deposition to 19 explore what happened with those answers and why there 20 were the changes. Do you understand that? 21 A. Yes, thank you. 22 Q. Okay, that's the preamble. So now I'm just 23 going to do a couple -- some background questions. 24 Did you prepare for this deposition today? 25 A. When you say "prepare," could you tell me what</p>	<p style="text-align: right;">Page 15</p> <p>1 background. 2 A. I have a B of science in sociology, from the 3 University of Oregon. I have a year of graduate school, 4 also sociology, from that same institution. Then I 5 switched from sociology to sexology and moved to San 6 Francisco and attended the Institute for Advanced Study 7 of Human Sexuality, a small graduate program here. And 8 got my Ph.D. in -- I think it was 1998. 9 Q. And was that from the Institute for Advanced 10 Study of Human Sexuality? 11 A. Yes. 12 Q. Can you describe your work history. 13 A. Some stints in restaurants back in the day. I 14 was a graduate teaching fellow in college, and I also 15 was the director of my campuses, LGBT student 16 organization, for a while. I was the director of 17 education at the Willamette AIDS Council in Eugene. 18 When I had moved to San Francisco I worked at the Lusty 19 Lady theater, which is a peep show, while I was going to 20 school. 21 And then worked at -- these two things are 22 simultaneous. Worked at Good Vibrations, beginning in 23 1990. My responsibilities, they're morphed into being 24 in charge of education programming. And, also, for a 25 couple of years was in charge of trainings at San</p>
<p style="text-align: right;">Page 14</p> <p>1 you mean. 2 Q. Did you meet with anyone before this 3 deposition? 4 A. Lorraine and I spoke before the deposition. 5 Q. Okay. Did you review any documents? 6 A. No. 7 Q. Did you meet with anyone else other than 8 Lorraine? 9 A. No. 10 Q. Did you take any notes to prepare for the 11 deposition? 12 A. No, I didn't. 13 Q. Did you participate in preparing the discovery 14 responses? And by that I mean, they're called 15 interrogatories or request for production of documents. 16 A. The questions that were sent, yes. Yes, I did. 17 Q. Okay. What did you do for those, those 18 questions that were asked? 19 A. Well, I answered them to the best of my 20 ability. 21 Q. Okay. 22 A. There were some documents that were requested, 23 and I made copies of them and sent them off so that they 24 could be forwarded to you all. 25 Q. Great. Can you describe your educational</p>	<p style="text-align: right;">Page 16</p> <p>1 Francisco Sex Information. That was a shorter period of 2 time, but was over the same period of time. I am 3 currently, in addition to the Good Vibrations job that I 4 still hold, the founding director at the Center for Sex 5 & Culture. 6 Q. Can you describe what the Center for Sex & 7 Culture is. 8 A. Center for Sex & Culture is a small nonprofit 9 that maintains a library and archive, as well as a 10 gallery, having to do with sexuality-related topics. We 11 collect notable papers from writers and activists, 12 books, from pop culture to academic, a range of 13 materials having to do with sexuality. And we produce 14 and offer sex ed classes, sex-related cultural 15 programming, and related benefits and things that 16 help -- allow the entity to continue. 17 Q. All right. And at Good Vibrations, currently 18 are you still in charge of their educational program? 19 A. My title now is staff sexologist and staff 20 historian, as well as the curator of the Antique 21 Vibrator Museum. 22 Q. Can you just describe what your duties are. 23 A. My fundamental role is overseeing educational 24 programming for the staff and the public, as far as the 25 entities that we do or the workshops that we do within</p>

<p>1 Q. That's all right.</p> <p>2 A. All right.</p> <p>3 Q. Can you describe what type of sexually explicit</p> <p>4 material that you produce.</p> <p>5 A. I have been involved in. Although, I wouldn't</p> <p>6 say I was a producing entity of sex education videos. I</p> <p>7 do erotic art, collage art, that sometimes has sexually</p> <p>8 explicit components to it, taken from other images. I'm</p> <p>9 a writer and sometimes do sexually explicit writing.</p> <p>10 I'm not sure if that counts as what you're asking me to</p> <p>11 describe, but that's part of my output.</p> <p>12 And at the Center for Sex & Culture we do two</p> <p>13 things that might have a relationship to this: One is</p> <p>14 the Masturbate-a-Thon and the other is our</p> <p>15 currently-inactive photo club.</p> <p>16 Q. And you say "inactive." What does that mean?</p> <p>17 A. We're not holding meetings of the photo club at</p> <p>18 the present, but we have, and we may again in the</p> <p>19 future.</p> <p>20 Q. When was the last time you held a meeting of</p> <p>21 the photo club?</p> <p>22 A. My recollection is it was late last summer.</p> <p>23 Q. What was the purpose of the photo club?</p> <p>24 A. The photo club brings nascent interested</p> <p>25 photographers in to work with more experienced</p>	Page 21	<p>1 that you make?</p> <p>2 A. What kind of material that's explicit?</p> <p>3 Q. Yes.</p> <p>4 A. Either alone or with my partner. Or in a few</p> <p>5 cases with another performer I have done sex ed</p> <p>6 associated with masturbation and vibrator use; lesbian</p> <p>7 or woman-to-woman safer sex; female ejaculation, also a</p> <p>8 masturbation-centric video; what is now called</p> <p>9 "pegging," which is a woman giving anal pleasure to a</p> <p>10 man. Those are the main -- the Sinclair movies were --</p> <p>11 I think one was a Tantra movie and one was a oral sex</p> <p>12 technique movie, if I remember that correctly.</p> <p>13 Q. Okay. And are you currently making these</p> <p>14 videos?</p> <p>15 A. At the moment, no. I can't say I've stopped</p> <p>16 permanently, but there hasn't been a project for a</p> <p>17 while.</p> <p>18 Q. When was the last time that you made a sex ed</p> <p>19 video?</p> <p>20 A. The last time I was associated in a production</p> <p>21 of a sex ed video was probably two years ago. I wasn't</p> <p>22 in front of the camera. I was a script writer and a</p> <p>23 host at that point, the talking head.</p> <p>24 Q. Is there a reason why you haven't done a video</p> <p>25 in the last two years?</p>	Page 23
<p>1 photographers in a group setting where they get</p> <p>2 education classes in photography, principles, and</p> <p>3 techniques. And then they do a shoot with models.</p> <p>4 Q. And are these nude models?</p> <p>5 A. They can be nude models and may be sexually</p> <p>6 explicit in their behavior. It just depends on the</p> <p>7 model and the day.</p> <p>8 Q. Okay. Is the class -- are these classes</p> <p>9 specifically for how to take photographs of sexually</p> <p>10 explicit material?</p> <p>11 A. Of erotic material. We wouldn't call it</p> <p>12 "sexually explicit" specifically, because someone might</p> <p>13 want to take any kind of a range of photos inclusive of</p> <p>14 that, but that wouldn't be it.</p> <p>15 Q. Okay. So sexually explicit could be a subset</p> <p>16 of what they are learning?</p> <p>17 A. That sounds right, yes.</p> <p>18 Q. And why isn't the photo club meeting currently?</p> <p>19 A. We had reached a kind of stasis with the</p> <p>20 members. There was a group of people who had been with</p> <p>21 it for a long time. People were starting to not come to</p> <p>22 meetings, so we decided to let it go fallow for a while</p> <p>23 and maybe revive it later with new members.</p> <p>24 Q. What sort of material is in the -- that is</p> <p>25 sexually explicit is in the sexual educational videos</p>	Page 22	<p>1 A. A project hasn't come along that appealed to</p> <p>2 me.</p> <p>3 Q. How many sex ed videos would you say you've</p> <p>4 made in the past?</p> <p>5 A. If you give me a minute to count on my fingers,</p> <p>6 I think I could.</p> <p>7 MS. BAUMGARDNER: And can we clarify? You're</p> <p>8 meaning produced and made in the generic sense rather</p> <p>9 than the statutory, I'm assuming?</p> <p>10 MR. SCHWARTZ: Right.</p> <p>11 THE WITNESS: Those that I have been involved</p> <p>12 with; is that really the clarification?</p> <p>13 BY MR. SCHWARTZ:</p> <p>14 Q. Yes.</p> <p>15 A. About 13, if I haven't forgotten one.</p> <p>16 Q. That's okay. And what time frame are we</p> <p>17 talking about, if you know, that these videos were</p> <p>18 produced over?</p> <p>19 A. I can give you a pretty good range. 1988, I</p> <p>20 think, was the first one, to, say, 2011.</p> <p>21 Q. And for those videos that you were involved</p> <p>22 with that had sexually explicit material in it prior to</p> <p>23 2257, did you make any effort to get age verification</p> <p>24 from the people who are performing?</p> <p>25 A. I wasn't involved in the production of anything</p>	Page 24

<p style="text-align: right;">Page 25</p> <p>1 before that time. I do remember giving my ID in those 2 contexts. So there was age verification conducted. I 3 just wasn't in charge of conducting it.</p> <p>4 Q. What about after the enactment of 2257 and the 5 videos, were you involved in the collection of IDs for 6 that?</p> <p>7 A. Always, yes.</p> <p>8 Q. What was that process?</p> <p>9 A. That process involved -- I was not the -- sort 10 of the originating entity of collection then either. 11 That involved showing ID, having ID recorded in some 12 manner, photocopied or -- signing a release that 13 included name, any other names performed under or aka's, 14 pseudonyms, address, date of birth. And I believe that 15 in each case there was the -- pursuant to U.S. 2257 as 16 part of the language of that release. That's my 17 recollection.</p> <p>18 Q. Okay. The erotic art that you talked about 19 that you've done in the past. Can you describe what 20 that is.</p> <p>21 A. Sure. I'm a collage artist, paper, scissors, 22 and glue. I take images usually that are from explicit 23 art but sometimes also from books of fine art, found 24 paper, anything that has an image on it that seems as 25 though it might work as it collides. It's a little</p>	<p style="text-align: right;">Page 27</p> <p>1 the art, because I don't always know the date of the 2 materials that I am pulling from. It seems clear that 3 when I have a photo of a naked person or sexually 4 explicitly conduct that I want to utilize in a piece of 5 art, that I can't get that 2257. If I were to put the 6 art out in the world in a published form -- I've done 7 gallery shows, but I've not published. And I'm hesitant 8 to publish because I don't have any idea how I would 9 come at this question of how to -- I don't know if that 10 makes me a secondary producer.</p> <p>11 The language of 2257 is a little daunting, but 12 also a little unclear to me in this particular context. 13 I haven't ever sought any legal opinion about it, 14 really, but it's one of the things I think that's 15 probably slowed me down from attempting to publish them.</p> <p>16 Q. But not necessarily the creation of it?</p> <p>17 A. No. I wouldn't say that I have not created 18 a piece when I was moved to create one for this reason. 19 But certainly what I do then with the finished piece of 20 paper, once the glue dries, this is somewhat relevant 21 too.</p> <p>22 Q. If you wanted to put sort of the art in a book 23 or --</p> <p>24 A. Yes.</p> <p>25 Q. Has it ever prevented you from having a gallery</p>
<p style="text-align: right;">Page 26</p> <p>1 difficult to explain collage in terms of that part. 2 I do maybe a few a year. I don't do a lot of 3 them, but I have displayed and shown them more than 4 once. And I will cut or tear images and assemble them 5 in a way that speaks to me, and I hope will speak to 6 viewers, to either highlight something about the 7 eroticism of the situation that I've compiled or 8 something else, some aesthetic communication or some 9 cultural or social communication.</p> <p>10 Q. When is the last time you put together a piece 11 of erotic art?</p> <p>12 A. I don't think -- I think the last collage I 13 constructed actually didn't have erotic elements 14 specifically. It was a gift for someone. That was late 15 last year. So I'm going to say it's been about a year 16 and a half, roughly, since I've done any new collage 17 work.</p> <p>18 Q. And is there a reason why you haven't made any 19 art?</p> <p>20 A. It's mainly associated with time frame, and it 21 takes a certain kind of inspiration to do visual art 22 like that, for me. And if I'm too busy I don't do it.</p> <p>23 Q. The requirements of 2257 are not preventing you 24 from creating erotic art?</p> <p>25 A. Well, they're problematic in the creation of</p>	<p style="text-align: right;">Page 28</p> <p>1 showing, the requirements of 2257?</p> <p>2 A. I don't think so. Although, to be frank, I 3 don't know if a gallery showing is a form of 4 publication, so it does give me some concern.</p> <p>5 Q. And the other thing you mentioned was the 6 Masturbate-a-Thon.</p> <p>7 A. Right.</p> <p>8 Q. Is that -- would you consider that your primary 9 involvement with sexually explicit material?</p> <p>10 A. I think it's one of my two primary 11 involvements. The other one being my involvement in the 12 sex ed videos. But the Masturbate-a-Thon, I think it's 13 fair to say, is the other most intensive involvement.</p> <p>14 Q. Okay. Can you describe the Masturbate-a-Thon 15 for me.</p> <p>16 A. Sure. The Masturbate-a-Thon -- and I want to 17 state here that it's the live Masturbate-a-Thon as 18 opposed to any other Masturbate-a-Thon, because the 19 original Masturbate-a-Thon wasn't a group event. It 20 wasn't an event that would have been recorded or webcast 21 or anything or even held in a group. It was a private 22 event.</p> <p>23 Which I can clarify for you, if you need me to. 24 The live Masturbate-a-Thon is an event at which people 25 are supposed to get pledges from others. They can also</p>

<p>Page 29</p> <p>1 pledge themselves if they don't have appropriate others 2 to ask for pledges. It's a charity fund-raising 3 event -- comparable to a walkathon, only involving 4 masturbation, and you don't have to get a permit to walk 5 in a park to do it -- that brings a range of people 6 together into one space, usually -- we've done these as 7 benefits for the Center for Sex & Culture. Usually the 8 space is at the Center for Sex & Culture, but we're not 9 always at the same location. Our current location is 10 too small to allow for the kind of Masturbate-a-Thon I'm 11 about to describe for you, so we've scaled back a little 12 bit.</p> <p>13 I'm going to describe the place that we mostly 14 used. It had three relatively large rooms. One room 15 would be the room where people who wanted to be involved 16 in a live webcast could go. They would have to sign 17 paperwork, give us copies of their ID. We carded 18 everyone who entered the building, but those people 19 would have to give us their real name and their aka's, 20 fill out paperwork, allow us to copy their ID, and then 21 they would get a band that would allow them to go into 22 the room where there would be people at the door to 23 prevent other people from going into the room.</p> <p>24 And there would be a room that was set up as a 25 private room where people would not have to worry about</p>	<p>1 that from the -- either from the public room or from the 2 main rooms, see how people were doing, talk about what 3 it takes to masturbate for a long time. Not everyone 4 can do it, et cetera.</p> <p>5 Does that give you the information you need?</p> <p>6 Q. Yes, it does.</p> <p>7 A. All right.</p> <p>8 Q. This is probably a fairly obvious point, but I 9 just want to get it on the record. Is there any sexual 10 intercourse at the Masturbate-a-Thon?</p> <p>11 A. It is expressly forbidden. Sexual intercourse 12 is expressly forbidden. Partner sex is not 13 masturbation. If a partner wants to be with their 14 masturbating partner, they can be with them, in contact 15 with them, but no sexual intercourse.</p> <p>16 Q. Okay. So what -- just to clarify, what you 17 would show on a webcast would be basically images of 18 masturbation and depictions of genitalia?</p> <p>19 A. Right, and discussions thereof.</p> <p>20 Q. Okay. And can you describe to me how it works 21 that the -- I'm going to call it "streaming." Is that 22 how --</p> <p>23 A. I think that's the right term. I'm not a 24 techie, but I think that's --</p> <p>25 Q. Me neither, but if we could just agree on that</p>
<p>Page 30</p> <p>1 a camera entering on any level, and we would have guards 2 there at the door as well. And then there would be a 3 room -- the refreshment table -- the place where I would 4 give interviews and interview other people while the 5 Masturbate-a-Thon was going on. Because the point of 6 the whole thing, as a live event webcast, is to talk 7 about masturbation and communicate ideas and information 8 about masturbation from the perspective of both the 9 people who are there, but also the -- the sexology of 10 it.</p> <p>11 So people would enter. They would stay at 12 the -- stay in line for the desk, the registration desk, 13 until we had everyone carded. The people who wanted to 14 be in the public room would go over to the side to talk 15 to the people who are doing that, taking their IDs, and 16 then everyone would mingle until they went into their 17 general rooms. People didn't have to masturbate, but 18 they could. There was a space set aside for women only, 19 if women didn't want to be in a group. Also one for men 20 only, if men didn't want to be in the group.</p> <p>21 And the other thing that was salient to all of 22 these Masturbate-a-Thons is that we gave awards for the 23 person who masturbated the longest time. So people 24 would come in and set themselves up with timekeepers and 25 do that whole competitive thing. And I would talk about</p>	<p>Page 32</p> <p>1 term, we'll call it "streaming," the method by which you 2 put it on the internet.</p> <p>3 A. Right.</p> <p>4 Q. Can you describe that process.</p> <p>5 A. I can describe only a little, because there's a 6 technology involved that I don't fully understand. My 7 understanding is that our crew would come in and connect 8 some kind of device -- that I'm not even sure of the 9 name of -- that allowed for enough bandwidth to go out 10 and actually do a successful stream. The first time we 11 tried it we didn't have such a bandwidth ability, and we 12 don't think we actually did stream. We don't even know.</p> <p>13 We got people in who knew how to do it, and so 14 they would really be in charge of the entire technical 15 piece of how they would -- how they wanted the room so 16 that they would have camera ability, that they wouldn't 17 disturb people but they could go into the people who did 18 wish to be depicted and get them appropriately, get them 19 on the stream. And I believe the camera is attached to 20 this device with long, long cords. That's what I 21 remember.</p> <p>22 And there was an element involved with our 23 webmaster installing a button so that people could go 24 and access the stream, I think.</p> <p>25 Q. Okay. When is the -- what year was the first</p>

<p style="text-align: right;">Page 33</p> <p>1 time you successfully did stream it to the internet?</p> <p>2 A. I think the answer to that -- I think the</p> <p>3 answer to that is 2005.</p> <p>4 Q. Have you at least attempted to stream it every</p> <p>5 Masturbate-a-Thon since then?</p> <p>6 A. With the exception of the last two years, when</p> <p>7 we have moved into a venue that's too small to allow the</p> <p>8 kind of moving around and grouping of people that I just</p> <p>9 described to you, I think the answer is yes.</p> <p>10 Q. Okay. So just to clarify, you have not</p> <p>11 streamed to the internet the Masturbate-a-Thons for the</p> <p>12 last two years?</p> <p>13 A. That's correct.</p> <p>14 Q. For the ones that did get streamed to the</p> <p>15 internet, how many people would you say were in the room</p> <p>16 where the streaming occurred? And by that I mean -- I</p> <p>17 don't care about the techies, but the people who were</p> <p>18 masturbating.</p> <p>19 A. The people who were willing to be depicted?</p> <p>20 Q. Yes.</p> <p>21 A. Because they didn't all masturbate,</p> <p>22 necessarily. It depended upon how they felt, I suppose.</p> <p>23 I'm going to say that the high end of that number was</p> <p>24 about 70 at our largest event, and was more like 30,</p> <p>25 maybe, at the smallest.</p>	<p style="text-align: right;">Page 35</p> <p>1 Q. Okay. What was the donation that people had to</p> <p>2 make to access?</p> <p>3 A. I think it was minimum of \$5, if I remember</p> <p>4 rightly.</p> <p>5 Q. How would people know that it was out there,</p> <p>6 that this was being put on the internet?</p> <p>7 A. We would announce it to our mailing list and</p> <p>8 the people associated with us, and we would talk about</p> <p>9 it, starting a couple of months in advance. The</p> <p>10 original Masturbate-a-Thon, the not live one that I</p> <p>11 didn't describe, during that period of time always had a</p> <p>12 PR presence that we could piggyback on and say that we</p> <p>13 too were doing a Masturbate-a-Thon, only a different</p> <p>14 kind, as will the other Masturbate-a-Thons around the</p> <p>15 world.</p> <p>16 There's at least two others that I know of.</p> <p>17 One does not meet the criterion that I just described to</p> <p>18 you. It's more of a club event with a masturbation</p> <p>19 theme. I'm not even sure what to say about that. I'm</p> <p>20 not associated with it directly, so I'm not really sure.</p> <p>21 And the other one is in Copenhagen. There was one in</p> <p>22 the UK one time too that I was a participant in.</p> <p>23 So there will be a press release sent by the</p> <p>24 original Masturbate-a-Thon. We'll send a press release,</p> <p>25 and they'll be some press. It's actually more</p>
<p style="text-align: right;">Page 34</p> <p>1 Q. And I presumed just by how this works, that</p> <p>2 people would come in and out?</p> <p>3 A. Yes.</p> <p>4 Q. So that 70 represents not at any one particular</p> <p>5 time but over the course of the event?</p> <p>6 A. Right. That's right.</p> <p>7 Q. How would someone access the live stream who</p> <p>8 wasn't there? How would they access it over the</p> <p>9 internet?</p> <p>10 A. Generally, what they would do -- and, again,</p> <p>11 this is me not being the tech person in my entity -- is</p> <p>12 they would go to the website, and there was a -- I</p> <p>13 believe there was a requirement of a credit card</p> <p>14 donation that would allow them to access the stream.</p> <p>15 That was one more piece of both fund raising and also</p> <p>16 protection around the stream.</p> <p>17 And my understanding is that we were not -- we</p> <p>18 were not the big cheeses as far as this was concerned.</p> <p>19 It didn't always succeed. It wasn't always a</p> <p>20 successfully sent stream. I know I was the one who had</p> <p>21 to send apology letters if somebody's stream got</p> <p>22 interrupted. So it really was a one-time a year. We</p> <p>23 would start it from scratch each time we did it. So I</p> <p>24 don't know if we changed the technology, even. I have</p> <p>25 to tell you I don't know that part.</p>	<p style="text-align: right;">Page 36</p> <p>1 interesting to international press than to U.S. press,</p> <p>2 which is fascinating. And so I'll do -- I will do</p> <p>3 telephone interviews with people from around the world</p> <p>4 and a few people in the U.S. to try to get pre-attention</p> <p>5 made, and we'll mention that there's a streaming part,</p> <p>6 if we've got -- if we think we've got that as part of</p> <p>7 the Masturbate-a-Thon.</p> <p>8 And then it appears to me that there is -- that</p> <p>9 there has been just general word of mouth or word of --</p> <p>10 I don't know -- word of Facebook, word of internet</p> <p>11 chatter, because people will e-mail us to ask us about</p> <p>12 the Masturbate-a-Thon and when it is, who are not on our</p> <p>13 list and whom we have not heard of before.</p> <p>14 So people, we'll hear back, will want to</p> <p>15 attend. People come from out of town to attend it</p> <p>16 sometimes.</p> <p>17 So that's the -- that's what I know about that.</p> <p>18 Q. All right. Did you ever receive any reports or</p> <p>19 anything that would enable you to know how many people</p> <p>20 were viewing the live stream?</p> <p>21 A. Yes, I think so. A couple of times at least,</p> <p>22 and it was not an enormous number. I do not remember</p> <p>23 for certain, but it would surprise me if it were more</p> <p>24 than 150 people who had actually accessed it. But</p> <p>25 that's not something that I can say with 100 percent</p>

<p>1 recollection.</p> <p>2 Q. And, just to be clear, can you describe what</p> <p>3 appeared on the live stream video.</p> <p>4 A. I think I can.</p> <p>5 Q. Okay.</p> <p>6 A. To my knowledge, what somebody would get would</p> <p>7 be one of two things: Either an image, like a YouTube</p> <p>8 image, I suppose, except without all of the surroundings</p> <p>9 of either the room, the large room, with the people</p> <p>10 within it, who consented to go in there masturbating, so</p> <p>11 that you could see a group of people, or more close-up</p> <p>12 focus on individual people.</p> <p>13 There would be, in many cases, a particular</p> <p>14 space where people could go and sit if they wanted to be</p> <p>15 featured. So sometimes people would do that, or that</p> <p>16 the crew would go around and find one or another person</p> <p>17 who looked like they were informing the world about</p> <p>18 masturbation in an enthusiastic way. So there would be</p> <p>19 that part.</p> <p>20 And/or -- and when I say "and" -- I think they</p> <p>21 could do split screen. So sometimes I would pop up on</p> <p>22 the side or whoever I was interviewing, just talking</p> <p>23 about masturbation while you could see masturbation</p> <p>24 happening. Or there would be me doing that or sort of a</p> <p>25 person on the street. Only they weren't on the street;</p>	Page 37	<p>1 my sense, from having been there on the ground, that</p> <p>2 there was more talk show than explicit most years. But</p> <p>3 I couldn't say that conclusively because, rather than</p> <p>4 viewing the stream, I was participating.</p> <p>5 Q. Does -- the live streams, are they ever</p> <p>6 replayed, sort of like you might see a repeat episode on</p> <p>7 television? Did you ever replay like the, let's throw</p> <p>8 out, 2008 Masturbate-a-Thon? Did you ever replay them</p> <p>9 on the internet?</p> <p>10 A. We never replay anything, no. Because</p> <p>11 there's -- no. I don't know about the UK TV show. I</p> <p>12 don't know about that. Maybe, but I don't know.</p> <p>13 Q. And what do you mean? What is the UK TV show?</p> <p>14 A. Well, there was a TV show made in the UK about</p> <p>15 the Masturbate-a-Thon that we participated in, but</p> <p>16 we weren't the -- I mean, we were the subjects of it,</p> <p>17 really, not the producers or anything like that. And I</p> <p>18 don't know -- I'm almost positive that has never aired</p> <p>19 here. I'm not even sure it aired there.</p> <p>20 Q. But as far as you and the people who actually</p> <p>21 put it on and the center, you never -- it's a one-time</p> <p>22 deal? Each Masturbate-a-Thon is a one-time deal for</p> <p>23 when it appears on the internet?</p> <p>24 A. That's correct. It's meant to be special in</p> <p>25 that way. It's really meant to be effervescent. It's</p>	Page 39
<p>1 they were there in the building. People saying, "How do</p> <p>2 you like the Masturbate-a-Thon? What do you want to let</p> <p>3 people know about masturbating; when did you start</p> <p>4 masturbating," any question that would be germane to</p> <p>5 that.</p> <p>6 And when we had featured celebrities there --</p> <p>7 which we didn't always, but sometimes we did -- we tried</p> <p>8 to have somebody there who, you know, as I told you, was</p> <p>9 one of our guests at one point.</p> <p>10 Q. And just to clarify, Nina Hartley?</p> <p>11 A. Nina Hartley, yes.</p> <p>12 Q. Okay.</p> <p>13 A. Then they would come and do sometimes a lot of</p> <p>14 interviewing with me, sometimes a half an hour or</p> <p>15 40-minute interview, depending on the time frame of the</p> <p>16 day, the number of people who were there, whether people</p> <p>17 had sort of cleared out of the public room by now but we</p> <p>18 were still waiting to see if somebody was going to break</p> <p>19 the record. And so I would do additional content that</p> <p>20 was basically a talk show about masturbation.</p> <p>21 Q. Is there any way you can estimate a percentage</p> <p>22 of what was of the sexually explicit material, the</p> <p>23 masturbation, versus what was, as you say, sort of talk</p> <p>24 show?</p> <p>25 A. I'm afraid that I can't estimate that. It is</p>	Page 38	<p>1 not to capture these people's likenesses permanently,</p> <p>2 because they're mostly not performers. They're mostly</p> <p>3 individuals who want to come do it.</p> <p>4 Q. So there's no -- is it in any way recorded</p> <p>5 permanently?</p> <p>6 A. There's photo documentation some years in that</p> <p>7 room, but, to my knowledge, no. To my knowledge, it's</p> <p>8 not retained.</p> <p>9 Q. The video?</p> <p>10 A. Yes.</p> <p>11 Q. And when you say "the photos," that's someone</p> <p>12 with a camera who comes in and takes pictures?</p> <p>13 A. That's correct.</p> <p>14 Q. Versus -- I think it's possible you could take</p> <p>15 stills from a video, but that's not what you're talking</p> <p>16 about?</p> <p>17 A. Right. That's not what I'm talking about.</p> <p>18 Q. Okay. Do you keep copies of any of the photos</p> <p>19 of sexually explicit material that might be taken at a</p> <p>20 Masturbate-a-Thon?</p> <p>21 A. I don't think we have any copies of any of this</p> <p>22 material at the center. I think the arrangement that we</p> <p>23 made was that the photographer would handle all of</p> <p>24 the -- making those photos available to press, if that</p> <p>25 were desired in the future. That's my understanding of</p>	Page 40

<p>1 the arrangement that we had with him.</p> <p>2 Q. And who is that photographer?</p> <p>3 A. David Steinberg.</p> <p>4 Q. Okay. So you don't post pictures on your own</p> <p>5 website from the Masturbate-a-Thons?</p> <p>6 A. We don't have any of those kinds of pictures on</p> <p>7 the Center for Sex & Culture's website, and I don't</p> <p>8 think we ever -- I don't think we ever posted anything</p> <p>9 on the Masturbate-a-Thon's own site that were from the</p> <p>10 Masturbate-a-Thon. I don't think so.</p> <p>11 Q. Do you know of any other producers of sexually</p> <p>12 explicit material who concentrate on masturbation and</p> <p>13 the candid display of genitals?</p> <p>14 A. There are certainly -- there are certainly</p> <p>15 plenty of masturbation-focused videos and sites. Some,</p> <p>16 I think, are subsites of other larger ones, if I</p> <p>17 understand correctly. I know that there have been</p> <p>18 specific -- as I told you, there have been a couple of</p> <p>19 specific masturbation-related things that I've been</p> <p>20 involved in, but they weren't all that those producers</p> <p>21 wanted to do.</p> <p>22 The main entities I know of right now are the</p> <p>23 people in Australia who do -- oh, what's their name?</p> <p>24 It's got "Exquisite" in the title, I think. Anyway,</p> <p>25 it's a focus -- I don't even know if they have genital</p>	Page 41	<p>1 you recall participating over the course of the</p> <p>2 Masturbate-a-Thons that you've held?</p> <p>3 A. Three or four.</p> <p>4 Q. And that's since you started doing the --</p> <p>5 A. Yes, that's right.</p> <p>6 Q. What was the year? What was the year that you</p> <p>7 did the first one?</p> <p>8 A. The very first one that we didn't have a</p> <p>9 successful attempt at a web -- the attempted webcast was</p> <p>10 not successful. If my memory serves me, that was in</p> <p>11 2001. It was in the spring of 2001.</p> <p>12 Q. And have you held it every year since then?</p> <p>13 A. There were a couple of years when we did not</p> <p>14 have a venue, so no. Most years since then, yes. I</p> <p>15 don't know that we had a venue that next year. I know</p> <p>16 we had our own venue in 2005 and at least one time we</p> <p>17 rented a different venue. It might have been twice, but</p> <p>18 it was at least once. So in the early 2000s it was not</p> <p>19 as consistent as it became once we had our venue.</p> <p>20 Q. And when was the most recent Masturbate-a-Thon?</p> <p>21 A. The most recent Masturbate-a-Thon was last May.</p> <p>22 Q. May 2012?</p> <p>23 A. May 2012, that's right. But it was not</p> <p>24 streamed.</p> <p>25 Q. If I'm correct, the last one that was streamed</p>	Page 43
<p>1 depiction. It may only be faces. It may only be</p> <p>2 orgasmic faces.</p> <p>3 There was a couple here in the Bay Area who</p> <p>4 were doing something called "Red Handed Productions"</p> <p>5 that cosponsored the Masturbate-a-Thon one year to</p> <p>6 promote their little masturbation videos. And I know</p> <p>7 there must be zillions more, but I couldn't tell you</p> <p>8 specific names of companies.</p> <p>9 Q. Do you know what the age range of people that</p> <p>10 participate in the Masturbate-a-Thons?</p> <p>11 A. Well, it goes up to the 60s or even 70 years</p> <p>12 old. I'm trying to remember the age of the youngest</p> <p>13 person that I can remember seeing an ID for. I feel</p> <p>14 like it's 19 or 20. People in their early 20s are rare</p> <p>15 there. That's not the kind of thing that most young</p> <p>16 people are interested in at all. It's mostly people in</p> <p>17 their 30s and 40s who attend.</p> <p>18 Q. But if someone came who had an ID, an</p> <p>19 appropriate ID who was 18 or 19, you would not prevent</p> <p>20 them from participating; is that accurate?</p> <p>21 A. If they had an appropriate ID, no.</p> <p>22 Q. No, meaning you would not --</p> <p>23 A. No, no. I'm sorry, yes, I would not prevent</p> <p>24 them from participating if they had an appropriate ID.</p> <p>25 Q. Okay. How many of the 19- or 20-year-olds do</p>	Page 42	<p>1 was in 2010?</p> <p>2 A. I believe that's right.</p> <p>3 Q. Is another Masturbate-a-Thon planned?</p> <p>4 A. Yes.</p> <p>5 Q. And when is that going to happen?</p> <p>6 A. We are going to have another Masturbate-a-Thon</p> <p>7 or similar event, because we're not sure that we want to</p> <p>8 continue the duration part. And the duration part is</p> <p>9 part of what makes it a Masturbate-a-Thon. So we might</p> <p>10 call it something else, but the gist will be the same.</p> <p>11 The last Saturday in May is when we have that scheduled.</p> <p>12 Q. This year?</p> <p>13 A. Yes.</p> <p>14 Q. Are there plans in place to live stream that?</p> <p>15 A. No. No, it will not be live-streamed.</p> <p>16 Q. Okay. So just to be clear, what impact is 2257</p> <p>17 having, if any, on your Masturbate-a-Thons and your</p> <p>18 ability to put them on?</p> <p>19 A. The fact that 2257 is a somewhat -- involves a</p> <p>20 somewhat complex set of instructions about how to take</p> <p>21 IDs, maintain those materials, and make them accessible</p> <p>22 is, frankly, really worrisome to us. We believe we did</p> <p>23 what we needed to do to make sure that we were in</p> <p>24 compliance, but we hope that's the case. So there's a</p> <p>25 little fear associated with that.</p>	Page 44

<p>1 We are a small all-volunteer nonprofit that 2 doesn't have regular office hours. So the part about 3 someone wanting to come in and actually see the 4 materials -- some appropriate entity coming to see the 5 materials, because inappropriate people don't get to see 6 them. They're on lockdown. We don't even allow our 7 interns to go through them. I'm essentially the person 8 who has to handle the material. This means that if 9 we're not there in the middle of the day, and we often 10 are not because our events are generally in the evening, 11 the place will be locked up and there would be no one to 12 give the FBI access, if the FBI is the entity that would 13 do that inspection. Whoever appropriate would do that 14 inspection, I guess, is what I mean.</p> <p>15 These are not the only reasons that we are not 16 streaming the Masturbate-a-Thon now. It also has to do 17 with the venue and the way that it's set up. But it's 18 true in part that our concern about the 2257s and that 19 whole part of what we need to do to comply affects our 20 decision. It's not irrelevant. It's not the only 21 thing, but it's not irrelevant either.</p> <p>22 The other piece that I probably ought to say 23 about this -- I think I adequately described that some 24 people say, "Yeah, I want to be in that room. I want to 25 show the world." And other people want to go into the</p>	<p>Page 45</p> <p>1 think that there are people for whom something that 2 otherwise would be an adult sexuality community event of 3 interest is made frightening on some level by this 4 requirement. And I'll never know how many people just 5 don't come into the door at all. I'll never know that.</p> <p>6 Q. But 2257 has not ever prevented you in and of itself from hosting a Masturbate-a-Thon?</p> <p>8 A. No. During the periods that we were doing this 9 streaming -- obviously, when we weren't doing streaming 10 it's not really a relevant question. But when we were 11 doing the streaming, no, it has never prevented us. It 12 probably has been part of the reason that we decided 13 only to stream and not to do anything further. That I 14 think goes without saying. Actually, I think if we 15 didn't have to have the concern about this set of 16 issues, that we would have retained more materials for 17 our archives and so forth, instead of it be an 18 effervescent thing.</p> <p>19 We do collect a certain amount of the material 20 that the press puts together and talks about. You know, 21 we try to keep clippings and things like that. I have 22 to tell the press about 2257 at every single event. 23 They don't understand. They don't know it's there. 24 They've never heard of it. They don't know what its 25 requirements are. If they have heard of it, they don't</p>	
<p>1 private room where there isn't going to be any risk of 2 them being recorded. And sometimes people will say that 3 they would do the live stream if they didn't have to 4 leave their ID, if they didn't have to give their name 5 and their home address, if they didn't have to step 6 across a line having to do with their own privacy that 7 they consider too problematic. Whether they don't trust 8 us to maintain their materials, I don't know. Whether 9 it's something larger, I don't necessarily know, because 10 I'm too busy in front of a camera at the 11 Masturbate-a-Thon to engage people a lot about this. 12 But they do say, sometimes, that if they could just sign 13 with the name, sort of their -- the name they use within 14 the sex community, that they would do it. But because 15 they have to give all of their real information, that 16 they're hesitant and unwilling.</p> <p>17 So how many of the people who actually do leave 18 their material and go in and participate also feel that, 19 I don't know. But, you know, I had signed these 20 releases, and it is not -- not of no concern to me that 21 I have now signed my name on a dotted line in this 22 context.</p> <p>23 So I think there's the phrase "the chilling 24 effect," right? I think there's a chilling effect. I 25 can't tell you how vast it is, but I can tell you that I</p>	<p>Page 46</p> <p>1 think it applies to the press. It's kind of 2 extraordinary.</p> <p>3 Q. Well, speaking of the press, I have some -- we'll go into that.</p> <p>5 I think it's what you -- the 11th Masturbate-a-Thon, I think, was in 2010. Are you aware that there was a photographer named Gretchen Robinette at that event?</p> <p>9 A. We knew that there was a photographer from the 10 San Francisco Weekly. Is that the person that you're 11 talking about?</p> <p>12 Q. Yes.</p> <p>13 A. Okay.</p> <p>14 Q. Are you familiar with the San Francisco Weekly?</p> <p>15 A. I'm familiar with the San Francisco Weekly.</p> <p>16 Q. Can you tell me what that is.</p> <p>17 A. It's a free weekly newspaper that has been 18 published in the Bay Area for at least 25 years, I 19 think. It used to be locally owned. I don't think it 20 is any longer. They've got a website and they've got a 21 paper now.</p> <p>22 Q. Are you aware that pictures of past Masturbate-a-Thons are on their website?</p> <p>24 A. I was told that the person had acquired images.</p> <p>25 I explained -- I remember when they walked in, and I</p>	<p>Page 48</p>

<p style="text-align: right;">Page 65</p> <p>1 about that were discussed. I don't know that I can 2 recall an instance where a prosecution was actually 3 taking place. So I guess the answer to the question is, 4 no, I don't think I can cite an instance that I know of.</p> <p>5 Q. And then, just to be clear, it's not -- the 6 question wasn't about actual prosecution, but anyone who 7 has been threatened with prosecution.</p> <p>8 A. I'm just having a little trouble parsing the 9 word "threatened" right now. That's why I'm being 10 silent a little bit. I think I know that people feel 11 under threat of potential prosecution, but I don't think 12 that's what you mean. Am I right?</p> <p>13 Q. No, I mean -- yes. Do you know of anyone where 14 the government or the FBI has come to an individual and 15 said, "We're considering prosecuting you under 2257"?</p> <p>16 A. I understand. I don't know of a specific 17 situation like that.</p> <p>18 Q. Okay. And what you refer to as "people are 19 aware," that's a possibility?</p> <p>20 A. That's correct.</p> <p>21 Q. But no one has ever officially told them that 22 they -- you don't know of any instances where an 23 official from the government has said, "We're thinking 24 about prosecuting"?</p> <p>25 A. That's right. I don't know of any instances of</p>	<p style="text-align: right;">Page 67</p> <p>1 A. While we haven't discussed it among ourselves 2 as to whether we would or would not, my feeling right 3 now in answering your question is that we wouldn't 4 because we're conscious of this question of privacy. 5 And we know that many people have that concern who come 6 to us. So if we weren't required to do this, I think we 7 probably wouldn't keep the records. We would still 8 check the ID; that would not change.</p> <p>9 Q. But without 2257 you may not necessarily take a 10 Xeroxed copy of it?</p> <p>11 A. That's correct. In a situation like the photo 12 club, where a record may still be kept of the person 13 modeled, we would keep their release. We would still 14 want a model release, but I don't think that we would 15 photocopy ID and keep them with the model release.</p> <p>16 Q. And in the absence of 2257, what instances in 17 what you do -- any aspect of what you do or the center, 18 would you do a model release?</p> <p>19 A. In the absence of 2257?</p> <p>20 Q. Yes.</p> <p>21 A. The model release that we would keep would be 22 associated with -- I believe only the photo club. I 23 think that's the only time when we know there may be a 24 record of the image that the person participated in 25 creating.</p>
<p style="text-align: right;">Page 66</p> <p>1 that kind.</p> <p>2 Q. Do you know of anyone who has actually been 3 prosecuted under 2257?</p> <p>4 A. Not to my recollection.</p> <p>5 Q. And I think we wanted to -- I think you covered 6 this a little bit, but I want to explore it and make 7 sure you have a complete answer on it.</p> <p>8 If you were not subject to the age verification 9 requirements and recordkeeping requirements of 2257, 10 would you still check IDs of the people who are 11 appearing in streaming video at your Masturbate-a-Thons?</p> <p>12 A. Absolutely. The Center for Sex & Culture is an 13 18-and-over venue, because of the materials we keep 14 there. And if there's any chance that we're going to 15 have any nudity, explicit conduct, we check IDs.</p> <p>16 Q. And why would you do that?</p> <p>17 A. Because it would not be appropriate to have 18 people under 18 be in a space with nudity and explicit 19 conduct. It's not legal in the first place, and it's 20 not something we do. We're an adult education entity. 21 There's a kind of education for young people that's 22 quite appropriate, but that's not it.</p> <p>23 Q. Okay. If you weren't subject to the 24 recordkeeping requirements of 2257, would you still keep 25 a copy of those, the IDs that you would have collected?</p>	<p style="text-align: right;">Page 68</p> <p>1 Q. You know, you probably wouldn't do it -- you 2 would probably not get a record, a model release from 3 someone who wanted to appear on the live stream; is that 4 accurate?</p> <p>5 A. We would still get a release from them, saying 6 that they knew that they were going to go into a 7 sexually-related environment. We would still check 8 their ID. I don't know that we would maintain a copy of 9 the release. But this is a little bit projective, 10 because at the present we're not doing streaming, and in 11 the future -- I don't know if we're going to stream the 12 Masturbate-a-Thon again. It's perfectly possible we 13 would stream something else, classes, things like that. 14 And I think we would cross that bridge when we came to 15 it and determine what we needed to do in order to 16 protect the people participating but also to protect 17 ourselves and comply with whatever compliance needed to 18 be done.</p> <p>19 Q. But, as we sit here today, if 2257 ceased to 20 exist tomorrow and you did decide to do a live stream of 21 a Masturbate-a-Thon, for those people who wished to 22 appear on the live stream, you would still get a model 23 release from those people; is that right?</p> <p>24 A. That's right.</p> <p>25 Q. Okay. And you're uncertain as we sit here</p>

<p style="text-align: right;">Page 77</p> <p>1 explicit material -- colloquially, we could say the porn 2 industry, and I suppose -- I mean, that's as good a -- 3 that's as clear a representation I think I could make 4 about it.</p> <p>5 Q. Okay. In that first paragraph of your answer, 6 you use the term "clearly mature adult." Can you 7 describe what you mean by that term?</p> <p>8 A. In this context, this would be -- well, people 9 who could not be mistaken for minors, for one thing. 10 But, as I said, most of the people involved in this kind 11 of work that I've done have been in their 30s and 40s. 12 So what I mean is over the age of majority, by "clearly 13 mature."</p> <p>14 Q. In your educational background, all of the 15 extensive education you've had, as part of that, did you 16 ever receive any training or education upon which you 17 could base your opinion that someone is clearly mature 18 at a particular age?</p> <p>19 A. No. No, I rely on IDs for that. When I have 20 to make a distinction about somebody's age, that's the 21 way that it has to be done.</p> <p>22 Q. And no part of your education involved -- I 23 mean, I understand you took classes in human sexuality.</p> <p>24 A. Sure.</p> <p>25 Q. Was there any aspect of it that discussed human</p>	<p style="text-align: right;">Page 79</p> <p>1 question, and we check IDs. So it wouldn't be 2 appropriate for us to try to determine that in any other 3 way.</p> <p>4 BY MR. SCHWARTZ:</p> <p>5 Q. Would you agree with me that it is difficult to 6 tell the specific age of a person just by visual 7 observation without checking their ID?</p> <p>8 A. The specific age?</p> <p>9 Q. Yes.</p> <p>10 A. Sure, but that's not how we try to do it in 11 this context.</p> <p>12 Q. And that's why you check IDs, because you can't 13 tell just by looking at someone?</p> <p>14 A. One of the reasons to check IDs is because that 15 takes some of the guesswork out of figuring out how old 16 someone is, yes.</p> <p>17 Q. And having checked the ID, that allows you to 18 be more competent about a person's age?</p> <p>19 A. That's right.</p> <p>20 Q. Especially for you, you would not turn away 21 someone who is 18 from a Masturbate-a-Thon, correct?</p> <p>22 A. I would not turn away someone who was 18 and 23 had the proper ID.</p> <p>24 Q. Do you -- through any of your training, do you 25 know the physiological and psychological differences</p>
<p style="text-align: right;">Page 78</p> <p>1 biology?</p> <p>2 A. Sure, discussion of Tanner stages and so forth, 3 but I'm not a specialist in any of that. That's not 4 something that I can state that I have enough expertise 5 in.</p> <p>6 Q. But you're familiar with how individuals are 7 judged as to being when they become sexually mature or 8 through puberty?</p> <p>9 A. Generally, but sexual maturity and age of 10 majority are two completely different things. They 11 can't be confused, especially not in a situation like 12 this.</p> <p>13 Q. And you would agree with me that it is 14 difficult to tell just by an image when a person agewise 15 becomes sexually mature?</p> <p>16 MS. BAUMGARDNER: Objection.</p> <p>17 THE WITNESS: Well, I would say that it's not 18 difficult to tell by most images if someone is of age. 19 In the world in which I'm primarily working, as I've 20 told you, few people are very young. And by "very 21 young," I mean close to 18, above but close. So it is, 22 in a way, difficult to watch people walking in who are 23 in their 30s and 40s and know that it's -- you know, we 24 check their ID anyway. We take their paperwork anyway, 25 but it's not a question. And it's very rarely a</p>	<p style="text-align: right;">Page 80</p> <p>1 between an 18-year-old and a 16-year-old?</p> <p>2 A. That would really depend on individual people. 3 I can't generalize to age 18 and age 16, and I don't 4 know that my training is sufficient to allow me to say 5 that I have real expertise in this topic. My work is in 6 adult sexuality, so that's a different level of 7 expertise.</p> <p>8 Q. Is there a reason why you can't generalize the 9 differences between a 16-year-old and an 18-year-old?</p> <p>10 A. Because people mature at different rates, and 11 I'm conscious of the need to see people as individuals 12 rather than aggregates.</p> <p>13 Q. And, based on your training, would you agree 14 with me that someone can reach sexual maturity prior to 15 age 18?</p> <p>16 A. Not legal sexual maturity, no. The biology of 17 it, I suppose, would be yes. It's not something that 18 would ever be germane to this work that I do, though.</p> <p>19 Q. Right. But it is possible for someone to 20 become physically sexually mature before they reach the 21 age of 18?</p> <p>22 A. In certain cases, yes, I guess so.</p> <p>23 Q. You talked about this a little bit, in your 24 answer to No. 7. You responded that artists are subject 25 to 2257. What did you mean by that specifically?</p>

<p style="text-align: right;">Page 85</p> <p>1 materials subject to 2257. I think we just talked about 2 one example. 3 A. Right. 4 Q. Are there any other examples that you know of? 5 A. That's an example. Individuals who might be 6 making erotic materials to share with their partner, 7 people who put up their exhibitionistic or frisky 8 pictures on websites. Web camming might be an example 9 of this. Some people do it not for money but for other 10 reasons. Sexting might be included in this sort of 11 thing. Certainly taking cell phone or electronic camera 12 shots in private moments would potentially, particularly 13 if they got out of a couple or an individual's hands, 14 then make this kick in, as I understand it. 15 Q. Okay. Do you know any private individuals who 16 are producing sexually explicit materials in the course 17 of their private sex lives who are complying with 2257? 18 A. No. And I should say, it's not that I don't 19 know people who are using cameras in their private sex 20 lives. I do know people like that. I don't know anyone 21 who is complying with 2257. 22 Q. Okay. And is there -- we may have already 23 discussed it, but I want to sort of break it out as an 24 individual question. 25 Why do you think that the statute applies to</p>	<p style="text-align: right;">Page 87</p> <p>1 are under 18. But if someone were under 18, then they 2 not only potentially would be up against 2257, they 3 would be making child porn. And I'm very, very 4 concerned about that. 5 Q. Do you know any individuals whose private sex 6 lives have been affected by 2257? 7 MS. BAUMGARDNER: Objection. 8 THE WITNESS: I think most private individuals 9 have no clue that they should consider their private sex 10 life potentially affected by 2257. So the answer is no, 11 but that doesn't mean that they wouldn't potentially be 12 affected under some circumstances. 13 BY MR. SCHWARTZ: 14 Q. Do you know of any individuals who have been 15 prosecuted under 2257 for sending sexually explicit 16 depictions of themselves privately to their significant 17 other? 18 A. I do not know of anyone that falls under that 19 description, no. 20 Q. Do you know of any private individuals who have 21 been subject to a 2257 inspection? 22 A. No. 23 Q. Going back to the interrogatories, No. 8 -- 24 actually, we already talked about -- yeah, we already 25 discussed how you collect them and where you keep them</p>
<p style="text-align: right;">Page 86</p> <p>1 individuals who are taking sexually explicit images or 2 videos in their private sex lives? 3 MS. BAUMGARDNER: Objection. 4 THE WITNESS: Not being an attorney, I can tell 5 you what my cultural concern is, rather than giving you 6 my legal opinion. 7 BY MR. SCHWARTZ: 8 Q. Sure. 9 A. My cultural concern is two-fold: One is, 10 people who make private materials aren't always 11 successful at keeping them private. And once something 12 like this becomes public -- an excellent example of this 13 would be a revenge website -- then it is now a produced 14 and published item. And my understanding of 2257 -- and 15 this is the other piece. This is connected. My 16 understanding of 2257 is that it doesn't make exceptions 17 for such things, that it probably was written at a time 18 when this was not a common phenomenon, but it certainly 19 is now. 20 So whenever I do public speaking these days, I 21 warn people about -- especially young people, if I'm 22 talking to college students, I warn them that what has 23 become a common courtship ritual is potentially going to 24 subject them to real legal problems. And if someone who 25 is under 18 -- and I don't really go talk to people who</p>	<p style="text-align: right;">Page 88</p> <p>1 and how many you have. 2 In Interrogatory No. 9 -- we did touch a little 3 bit on this earlier -- I'm just wondering if you can 4 give an estimate on the number of people who have come 5 to your Masturbate-a-Thons between the ages of 18 and 6 25? 7 A. I could not tell you conclusively, but people 8 under 25 are the exception, not the rule. And I can 9 estimate the percentage of people under 25 as being 10 10 percent or fewer. I don't know if that's helpful. 11 Q. That's a perfectly good response. That's what 12 you believe. 13 For Interrogatory No. 10, in your response you 14 state that there are a number of images that you would 15 publish as a part of your work were it not for the 2257 16 requirements. 17 I just want to confirm that we've already 18 basically discussed that as sort of your art and collage 19 images? 20 A. And we likely would make different choices 21 about the Masturbate-a-Thons if we felt it was safer to 22 do it, so the Masturbate-a-Thon is also relevant to this 23 question, I think. 24 Q. And just on sort of the images you would 25 publish, would you publish more images from the</p>

<p style="text-align: right;">Page 109</p> <p>1 addition to the experience that the photographers get 2 from doing that photo shoot, they also make those 3 available to the couple. So that's a variant, I think, 4 of what you're asking me.</p> <p>5 Q. Yes. And those were not made generally 6 available. It was just for the couple who was 7 participating in the photo session?</p> <p>8 A. Our agreement with the photo club photographers 9 is that unless they get a separate release from the 10 models -- we're attempting to install in them good 11 practices around 2257 compliance, in asking them to do 12 this; it's the reason that we do it -- we ask that they 13 not do anything else with those images. So, really, the 14 images exist for the use of the models and of the 15 photographers on a learning level, not a publication 16 level.</p> <p>17 Q. And the couples that were photographed, you did 18 the ID check and the model releases?</p> <p>19 A. Yes, absolutely right.</p> <p>20 Q. And they signed the releases?</p> <p>21 A. Yes.</p> <p>22 Q. Do you know any photographers that it's 23 their -- sort of their profession to take pictures of 24 couples engaged in sexually explicit material for their 25 own private use?</p>	<p style="text-align: right;">Page 111</p> <p>1 that you believe is burdensome to the point of being 2 unconstitutional.</p> <p>3 A. Burdens would include the fact that the 4 provisions in 2257 might fall upon people that perhaps 5 they weren't intended to in the first place. They 6 certainly seem to relate to all sexual depictions, and 7 that, it seems to me, is overly broad, and for that 8 reason is burdensome. This last set of discussions 9 we've been having about people's private uses and stuff, 10 that seems relevant to this question to me.</p> <p>11 The way that the recordkeeping requirements can 12 be onerous, particularly for a small entity -- a big 13 entity that does this all the time, it's my 14 understanding that all those guys did their best to find 15 out how they could comply as soon as they possibly 16 could. And it's the journalists, the artists, the 17 community-based organizations like mine, and the people 18 who don't -- and also the people who don't even know 19 that 2257 might relate to them, I think it's safe to say 20 that most Americans don't actually know anything about 21 these regulations. And some subset of those people are 22 engaging in some kind of sexually frisky behavior that 23 might at some point land them in this field of concern.</p> <p>24 The other thing that I will say in answer to 25 your question is sort of a more personal one, but I</p>
<p style="text-align: right;">Page 110</p> <p>1 A. For their own private use?</p> <p>2 Q. The couple's private use.</p> <p>3 A. Right, right. As opposed to them having copies 4 of the pictures, but the photographer also being free to 5 publish that or use it in some other way? Is that what 6 you mean?</p> <p>7 Q. Yes.</p> <p>8 A. I know that there are photographers who 9 advertise those kinds of services. I don't believe I 10 know anybody who restricts their photographic work to 11 that, personally.</p> <p>12 Q. I know we've talked a little bit about this, 13 but just to make sure I've got everything covered. You 14 have read Section 2257, correct?</p> <p>15 A. Yes.</p> <p>16 Q. Have you read the regulations that go along 17 with it?</p> <p>18 A. I don't think so.</p> <p>19 Q. Do you understand the difference between the 20 statute and the regulations?</p> <p>21 A. I'm not sure that I do.</p> <p>22 Q. Okay. One of the other claims is that the 23 Statute 2257 is burdensome. Are you familiar with that?</p> <p>24 A. Uh-huh. Yes.</p> <p>25 Q. Can you describe for me what those burdens are,</p>	<p style="text-align: right;">Page 112</p> <p>1 imagine that it is a sentiment that other people who are 2 plaintiffs here and who are in relevant situations to us 3 may feel. And that's that these are Federal charges, 4 and they're frightening to contemplate. The degree of 5 responsibility that I have for my nonprofit affects its 6 well-being and it affects my well-being, and it's kind 7 of terrifying. It's kind of terrifying. So that's part 8 of my answer to that question.</p> <p>9 I think the people who are not worried about 10 these regulations are mostly the people who don't know 11 they exist.</p> <p>12 Q. Okay. So previously we talked about your 13 understanding in sort of a layperson's understanding of 14 narrowly tailored. You've also just discussed what some 15 of the burdens are that you believe.</p> <p>16 Are there any other reasons that you have that 17 you believe 2257 is unconstitutional?</p> <p>18 MS. BAUMGARDNER: Objection.</p> <p>19 THE WITNESS: This makes me want to go back to 20 school and be a constitutional scholar.</p> <p>21 MS. BAUMGARDNER: I will make an objection for 22 the record that I think it is an unfair question, 23 asking, you know, this plaintiff how a law is 24 unconstitutional. But to the best of her ability, I'll 25 allow her to answer.</p>

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1 because it is possible for a minor to look over 18?

2 MS. BAUMGARDNER: Objection.

3 THE WITNESS: I would imagine that it is
4 possible for a minor to look over 18. That is not
5 something that is my area of expertise, but clearly this
6 is -- I'm going to leave it there.

7 BY MR. SCHWARTZ:

8 Q. And why is it your belief that it's a good
9 practice to check IDs no matter what?10 A. Because treating everybody who comes in the
11 door the same way is wise, for one thing. That way
12 people's interpretation doesn't overlay the policy and
13 the procedure. Because it's illegal for someone under
14 18 to be in a sexually explicit depiction or to access
15 sexually explicit space, and the effects on that person
16 are what the law is attempting to protect them from.
17 And we also have a stake in protecting them from those,
18 and we have a stake in protecting the other people there
19 from the accusation that people may have been under 18.20 So, really, the protection goes both ways in
21 terms of that policy and in terms of the law.22 MR. SCHWARTZ: That's all I have. I wanted to
23 ask about signing reading and signing.24 MS. BAUMGARDNER: Okay. We'll stay and work on
25 the spellings after we're off the record, and we will

1 STATE OF CALIFORNIA)

2) Ss.

3 COUNTY OF SAN FRANCISCO)

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5 I hereby certify that the witness in the
6 foregoing deposition, CAROL A. QUEEN, Ph.D., was by me
7 duly sworn to testify to the truth, the whole truth, and
8 nothing but the truth, in the within-entitled cause;
9 that said deposition was taken at the time and place
10 herein named; that the deposition is a true record of
11 the witness's testimony as reported by me, a duly
12 certified shorthand reporter and a disinterested person,
13 and was thereafter transcribed into typewriting by
14 computer.15 I further certify that I am not interested in
16 the outcome of the said action, nor connected with, nor
17 related to any of the parties in said action, nor to
18 their respective counsel.19 IN WITNESS WHEREOF, I have hereunto set my hand
20 this 30th day of April, 2013.

21

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DAWN E. HOWARD, CSR NO. 13201
STATE OF CALIFORNIA

Page 122

1 waive then.

2 (At 12:21 P.M., the deposition proceedings
3 concluded.)

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CAROL A. QUEEN, Ph.D.

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In The Matter Of:

*FREE SPEECH COALITION, INC. v
THE HONORABLE ERIC H. HOLDER,*

March 15, 2013

*SOUTHERN DISTRICT REPORTERS
500 PEARL STREET
NEW YORK, NY 10007
212 805-0330*

March 15, 2013

	Page 1	Page 3
1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25	<p>ROSS UNITED STATES DISTRICT COURT EASTERN DISTRICT OF PENNSYLVANIA -----x FREE SPEECH COALITION, INC. et al., Plaintiffs, v. No. 09-4607 THE HONORABLE ERIC H. HOLDER, Defendant. -----x</p> <p>March 15, 2013 9:00 a.m.</p> <p>Deposition of CARLIN ROSS, taken by Defendant, at the United States Attorney's office, One St. Andrew's Plaza, New York, New York, before Samuel G. Mauro, Jr., a Registered Merit Reporter and Notary Public of the State of New York.</p>	<p>Ross CARLIN ROSS, called as a witness by the Defendant, having been duly sworn, testified as follows: EXAMINATION BY MR. BLADUELL: Q. Good morning, Ms. Ross. We thank you for being here with us to explain your claim. My name is Hector Bladuell. I represent the government in this case. Have you been deposed before? A. Yes, I have. Q. When have you been deposed? A. It was a case when I was counsel at a company years ago on an insurance claim, 9/11 business interruption insurance claim. Q. You are an attorney also, correct? A. Yes, I am. Q. As you know, the purpose of this deposition is not to discuss the merits of your claim. A. Yes. Q. The purpose is to understand better your claim. To do that I am going to ask you</p>
1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25	ROSS A P P E A R A N C E S BERKMAN, GORDON, MURRAY & DEVAN Attorneys for Plaintiffs 55 Public Sq., Ste. 2200 Cleveland, OH 44113-2000 BY: LORRAINE BAUMGARDNER, ESQ. United States Department of Justice Civil Division, Federal Programs Branch Attorneys for Defendant 20 Massachusetts Avenue, N.W. Room 7130 Washington, DC 20530 BY: KATHRYN WYER, ESQ. HECTOR G. BLADUELL, ESQ.	Page 2 Ross several questions. Your counsel is probably going to have at most two objections during this examination. Unless she instructs you not to answer, you should answer the question if you know the answer. If you don't understand my question, please ask me, and I will rephrase it. If you need a break, please ask me and we will break. Do you have any condition that would impair you from understanding my questions today? A. No. Q. Are you under any medication that would impair your ability to understand my questions today? A. No. Q. Do you also understand that you have taken an oath to tell the truth today? Yes? A. Yes. Q. Before I begin, do you have any questions at this point about the deposition? A. No.

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<p>1 Ross</p> <p>2 Q. Ms. Ross, have you prepared for this</p> <p>3 deposition?</p> <p>4 A. Yes.</p> <p>5 Q. How have you prepared for the</p> <p>6 deposition?</p> <p>7 A. I met with Lorraine and we just went</p> <p>8 over answers to some of the interrogatories.</p> <p>9 Q. Besides the answers for the</p> <p>10 interrogatories, did you go through any other</p> <p>11 documents?</p> <p>12 A. No.</p> <p>13 Q. So you reviewed the answers to the</p> <p>14 first set of interrogatories, correct?</p> <p>15 A. Correct.</p> <p>16 Q. The second set of interrogatories?</p> <p>17 A. I believe so, yes.</p> <p>18 Q. The requests for admissions?</p> <p>19 A. Yes.</p> <p>20 Q. The requests for production?</p> <p>21 A. Yes.</p> <p>22 Q. Did you make any notes to prepare for</p> <p>23 this deposition?</p> <p>24 A. No.</p> <p>25 Q. You don't have any notes with you</p>	<p>1 Ross</p> <p>2 A. Yes, the New York bar.</p> <p>3 Q. You are a member in good standing?</p> <p>4 A. Yes.</p> <p>5 Q. You have never been suspended or</p> <p>6 reprimanded?</p> <p>7 A. No.</p> <p>8 Q. Do you currently practice law?</p> <p>9 A. No.</p> <p>10 Q. After law school, what was your first</p> <p>11 job?</p> <p>12 A. My first job was working as general</p> <p>13 counsel of Globex Corporation.</p> <p>14 Q. What did you do as general counsel of</p> <p>15 that corporation?</p> <p>16 A. Mostly contractual-based work. We</p> <p>17 were an Internet service provider, so it was</p> <p>18 heavy service agreements. Then we would bring</p> <p>19 in programmers from India and Russia with H-1Bs</p> <p>20 and stuff like that, and so some immigration,</p> <p>21 employee manuals, like all that corporate kind</p> <p>22 of stuff.</p> <p>23 Q. You did this job for how long?</p> <p>24 A. I guess it was three years.</p> <p>25 Q. Three years. After this job what did</p>
<p>1 Ross</p> <p>2 today?</p> <p>3 A. No.</p> <p>4 Q. Did you participate in preparing the</p> <p>5 discovery responses?</p> <p>6 A. Yes.</p> <p>7 Q. All of the ones I just mentioned?</p> <p>8 A. Yes.</p> <p>9 Q. Let's talk a little bit about your</p> <p>10 education.</p> <p>11 A. Sure.</p> <p>12 Q. You went to law school where?</p> <p>13 A. I went to Brooklyn Law School.</p> <p>14 Q. You graduated when?</p> <p>15 A. '98.</p> <p>16 Q. '98. It is not so long ago. That</p> <p>17 year you took the bar, correct?</p> <p>18 A. Yes.</p> <p>19 Q. You passed the bar?</p> <p>20 A. I did, first time, yes.</p> <p>21 Q. Great. Are you still a member of a</p> <p>22 bar?</p> <p>23 A. Yes.</p> <p>24 Q. What is this bar? The New York bar, I</p> <p>25 assume?</p>	<p>1 Ross</p> <p>2 you do?</p> <p>3 A. Then I went independent. I guess I</p> <p>4 was self-employed. I was hired by companies to</p> <p>5 roll up assets of failed dot-coms. I joined an</p> <p>6 LLC, and we rolled up the assets of a company</p> <p>7 Pseudo Programs and relaunched as an online</p> <p>8 broadcaster. That's how I segued from law to</p> <p>9 media.</p> <p>10 Q. After this job is when you started</p> <p>11 working with Betty Dodson, correct?</p> <p>12 A. There were a few years that I was</p> <p>13 independent, so after that job I started a</p> <p>14 website. I was blogging, and then I interviewed</p> <p>15 Betty.</p> <p>16 Q. What were you blogging about?</p> <p>17 A. Female sexuality and relationships.</p> <p>18 Q. Do you have any training in sexuality?</p> <p>19 A. No.</p> <p>20 Q. What was your bachelor's degree in?</p> <p>21 A. Political science.</p> <p>22 Q. You have no medical training?</p> <p>23 A. No.</p> <p>24 Q. Any courses that you took before law</p> <p>25 school about sexuality?</p>

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<p>1 Ross 2 A. No. 3 Q. Or male or female genitalia? 4 A. No. 5 Q. Any courses you have taken after law 6 school about genitalia? 7 A. No. 8 Q. About sexuality? 9 A. No. 10 Q. So how do you know about sexuality and 11 genitalia? 12 MS. BAUMGARDNER: Objection. Go 13 ahead. 14 A. I guess I did my own studies, and I 15 have been practicing with Betty now for five 16 years. And we have traveled the world 17 lecturing. Betty is the number one sexologist 18 in the world, so I guess that's more like 19 training. It is more of an apprenticeship. 20 Q. Before you started with Ms. Dodson, 21 what kind of how did you acquire the knowledge 22 about sexuality and genitalia? 23 MS. BAUMGARDNER: Objection. 24 Go ahead. 25 A. Reading books. Reading books,</p>	<p>1 Ross 2 Q. Can you please describe what you do 3 with Betty Dodson in this business? 4 A. Sure. I am editor in chief of the 5 website. So we have -- 6 Q. What is the name of this website. I'm 7 sorry to interrupt. 8 A. That's OK. Dodsonandross.com. 9 Q. OK. 10 A. We have 25 writers. So I manage the 11 writers. I decide what kind of content we are 12 going to go after at what time, like any editor 13 of a magazine. 14 I have the whole technical strategy of 15 the website. I run the website. I am not a 16 programmer, but I sit on top of them and manage 17 work that needs to be done from our affiliate 18 sales and affiliate deals to all of our customer 19 service, to our product fulfillment -- we have a 20 lot of original product -- to the video 21 production. 22 Q. Are you the president of -- is there a 23 company name? 24 A. Yes. Bad Media LLC, which is Betty 25 Anne Dodson.</p>
<p>1 Ross 2 educating myself. 3 Q. Do you recall any books in particular 4 that you read? 5 A. Good question. 6 You know I wouldn't say I read 7 anything specifically about female genitalia, 8 maybe more about body image. "Why We Love" by 9 Helen Fisher; "She Comes First," Ian Kerner; 10 "The Ethical Slut"; "The Guide to Getting It 11 On." 12 What else? That would be pretty 13 much -- I mean "The Guide to Getting It On" is 14 kind of a 2,000-page primer. 15 Q. Did any of these books discuss how you 16 would determine someone's age by looking at 17 them? 18 A. No. 19 Q. By looking at their genitals? 20 A. No. 21 Q. You said you are working with Betty 22 Dodson? 23 A. Yes. 24 Q. Since what year? 25 A. Since 2006.</p>	<p>1 Ross 2 Q. Betty Anne Dodson. 3 A. LLC. 4 Q. Bad Media is the holding company? 5 A. Well, it is a limited liability 6 corporation. 7 Q. Limited liability corporation. Do you 8 have other companies that Bad Media owns? 9 A. No. 10 Q. So the website is owned -- the name of 11 the website BettyDodson.com? bettyandross.com? 12 A. dodsonandross.com. 13 Q. Is that website owned by the company? 14 A. Yes. 15 Q. Are you the president of the company? 16 A. Yes. 17 Q. You have been the president since 18 when? 19 A. Inception, so I guess I was like 2007 20 I believe. 21 Q. Is Betty Dodson your superior? 22 A. She is the founder. She is the big 23 boss, yes. 24 Q. So you report to her? 25 A. Yes.</p>

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<p>1 Ross 2 Q. She doesn't report to you? 3 A. No. 4 Q. Is there a Genital Art Gallery in this 5 website? 6 A. Yes. 7 Q. Do you manage the content of that 8 gallery? 9 A. Yes. 10 Q. Ms. Dodson, does she manage the 11 content, too? Is it a joint operation? 12 A. I would say, yes, it's joint. 13 Q. You said you managed the videos, 14 correct? 15 A. Yes. 16 Q. Would you say that you are the best 17 person along with -- do you have any other 18 employees? 19 A. No. 20 Q. So you would be the person that knows 21 more about the videos and the depictions in the 22 gallery? 23 A. Yes. 24 Q. Do you have any publications? 25 A. What do you mean by "publications"?</p>	<p>1 Ross 2 kind of manage what people are clicking on, what 3 they're looking for. Because we're really 4 global. We are in every country but 5 Turkmenistan and three countries in Africa. So 6 we're accessed worldwide. 7 Q. The phrase that is most used is "how 8 to make a girl come"? 9 A. After "Betty Dodson." Betty is first. 10 Then it's "how to make a girl come." 11 Q. Do you recall any other phrases in the 12 top five? 13 A. Oh, God. 14 It is always "Betty Dodson," "how to 15 make a girl come," then "Betty Dobson," d-o-b, 16 so I bought that keyword because I saw they were 17 spelling it wrong, "female orgasm" and then 18 "pussy." Sorry. 19 Q. Anything else that you recall at this 20 point? 21 A. Sure. I mean all kinds of words like 22 "threesomes." 23 "Genital shame" is a big one. "Am I 24 normal?" We get a lot of that. They will give 25 you hundreds of them, but it is kind of</p>
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<p>1 Ross 2 Q. Articles that you have written. 3 A. Yes. 4 Q. How many? 5 A. A few. I have a column now on 6 Huffington Post. So I think maybe four, because 7 we just started. 8 Q. Have you written any books? 9 A. Yes. I just launched my book a month 10 ago. I am so excited. 11 Q. What is the name of the book? 12 A. "How to Make a Girl Come." I just 13 want to say for the record I chose that name 14 because it is a the most searched phrase that 15 people use to find the site. That's why I did 16 it. 17 Q. How do you know that it's the phrase 18 that most people use to search the site? 19 A. We have an account with Google 20 Analytics, so you can go in if you link your 21 website to it, and it will tell you what's the 22 most popular content what are the top keywords, 23 where people are coming from all over the world 24 to visit your site. 25 That is a large part of what I do is I</p>	<p>1 Ross 2 permutations, and most of it is focused on 3 genital and genital issues and orgasm for women. 4 Q. Any search terms related to "young"? 5 A. No. 6 Q. Or "teen"? 7 A. We don't get any "barely legal," no. 8 Q. How would you described division of 9 work in this Bad Media company between you and 10 Betty Dodson? 11 A. Betty is the brand. Betty has a very 12 authentic kind of unspoiled brand. She answers 13 the sex questions. We get about 20 to 30 sex 14 questions from the web a day, and she answers 15 those. Then I would say I'm kind of the 16 one-woman show behind that. 17 Q. Do you consider Betty Dodson an expert 18 in sexuality? 19 A. Yes. 20 Q. Do you consider her an expert in 21 genitals? 22 A. Yes. 23 Q. Does Betty Dodson manage the 24 day-to-day operations of the company? 25 A. To a certain degree because I include</p>

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<p>1 Ross</p> <p>2 Q. The videos are mostly about</p> <p>3 masturbation, correct?</p> <p>4 A. Correct.</p> <p>5 Q. And display of the genitals?</p> <p>6 A. Yes.</p> <p>7 Q. Would you say 99 percent of the videos</p> <p>8 are about masturbation?</p> <p>9 A. Yes.</p> <p>10 Q. So what sexually explicit videos has</p> <p>11 your company produced since 2005?</p> <p>12 A. It think The Orgasm Doctor, then a</p> <p>13 Manual Skills series, our Sex Positions with Sex</p> <p>14 Toys series. I think that's in 2005. I think</p> <p>15 that's it.</p> <p>16 Q. So you mentioned the Orgasm Doctor?</p> <p>17 A. Yes.</p> <p>18 Q. You mentioned the Manual Skills</p> <p>19 series?</p> <p>20 A. Yes.</p> <p>21 Q. Then you mentioned another one? A</p> <p>22 third one?</p> <p>23 A. Sex Positions with Sex Toys.</p> <p>24 Q. Sex Positions with Sex Toys, what year</p> <p>25 was it produced?</p>	<p>1 Ross</p> <p>2 A. Yes.</p> <p>3 Q. Were you the one responsible for</p> <p>4 managing that access?</p> <p>5 A. Yes.</p> <p>6 Q. It was not Betty Dodson?</p> <p>7 A. No.</p> <p>8 Q. Did you grant us complete access to</p> <p>9 all the videos shown on your website?</p> <p>10 A. I believe so, yes.</p> <p>11 Q. So you didn't select a portion of</p> <p>12 videos?</p> <p>13 A. I don't believe so.</p> <p>14 Q. For us to see.</p> <p>15 So all the videos on your website are</p> <p>16 accessible to us free of charge?</p> <p>17 A. I believe so, yes.</p> <p>18 Q. You said you believe so. Are you sure</p> <p>19 about it or you're not sure about it?</p> <p>20 A. I am a not a hundred percent because</p> <p>21 it was done a while ago. I can't remember how</p> <p>22 much I gave you. I think I gave you everything.</p> <p>23 MS. BAUMGARDNER: Can we go off the</p> <p>24 record for a minute. If you want to go back</p> <p>25 on --</p>	
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<p>1 Ross</p> <p>2 A. I think it was 2010 or 2011.</p> <p>3 Q. And the one -- the Manual Skills?</p> <p>4 A. Yes.</p> <p>5 Q. What year was that produced?</p> <p>6 A. I believe that was 2009 or 2010</p> <p>7 because we kind of did them really close</p> <p>8 together.</p> <p>9 Q. Any other videos produced since 2005?</p> <p>10 A. I don't believe so.</p> <p>11 Q. Before 2005?</p> <p>12 A. Yes.</p> <p>13 Q. What videos have you produced?</p> <p>14 A. That was pre-me. I came in in --</p> <p>15 Q. 2005?</p> <p>16 A. Yes. Betty did the Joy of Self-joy,</p> <p>17 Viva La Vulva, Celebrating Orgasm, Orgasmic</p> <p>18 Women, and The Orgasm Doctor. I think she shot</p> <p>19 it and then I worked on the editorial.</p> <p>20 Q. You granted us access to your website,</p> <p>21 correct?</p> <p>22 A. Yes.</p> <p>23 Q. You gave us a user name?</p> <p>24 A. Yes.</p> <p>25 Q. And a password?</p>	<p>1 Ross</p> <p>2 Q. I'm sorry. Do you have a question</p> <p>3 about a question that I have asked?</p> <p>4 A. To ask you?</p> <p>5 Q. Yes.</p> <p>6 A. No, I don't.</p> <p>7 MR. BLADUELL: So why are you --</p> <p>8 MS. BAUMGARDNER: I just want to</p> <p>9 clarify. My understanding is we granted you</p> <p>10 access.</p> <p>11 MR. BLADUELL: I am not asking you for</p> <p>12 your understanding, counsel.</p> <p>13 MS. BAUMGARDNER: I was just going to</p> <p>14 go off the record so I could explain to you what</p> <p>15 we did.</p> <p>16 MR. BLADUELL: Can we go off the</p> <p>17 record, please.</p> <p>18 (Discussion off the record)</p> <p>19 Q. Ms. Ross.</p> <p>20 A. Yes.</p> <p>21 Q. I am going to show you a document. It</p> <p>22 is a printout of your website that I printed</p> <p>23 out. I am going to mark it as Exhibit 1.</p> <p>24 A. That lists all the videos, OK, easy.</p> <p>25 (Exhibit RD-1 marked for</p>	

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<p>1 Ross 2 identification) 3 Q. We? 4 MR. BLADUELL: have marked the 5 exhibit as RD-1, Ross Dodson. 6 MS. BAUMGARDNER: May I see a copy of 7 that, please. 8 MR. BLADUELL: Yes. That's your copy. 9 I'm sorry. This is your copy. 10 For the record I'm handing a copy to 11 the witness, Carlin Ross, and to counsel. 12 Q. This is a copy of the section my 13 account. 14 A. Yes. 15 Q. Related to the access that you 16 provided us? 17 A. Uh-huh. 18 MS. BAUMGARDNER: You have to answer 19 verbally, Carlin. 20 THE WITNESS: Sorry. 21 MR. BLADUELL: Thank you, counsel. 22 A. Yes. 23 Q. It lists the videos that we have 24 access to, correct? 25 A. Correct.</p>	<p>1 Ross 2 verbally. 3 A. Yes. 4 MR. BLADUELL: Thank you, counsel. 5 Q. Women Using Homemade Zucchini Dildo, 6 2005? 7 A. Yes. Those are, the next bunch are 8 all 2009 or 2010. 9 Q. The next bunch, you mean which ones? 10 A. From Women Masturbating with Barbells 11 and mystic to Right-Angle Position with Hitachi 12 Magic Wand. 13 Those were all produced together. 14 Q. In 2010? 15 A. Yes. 16 Q. Now, now you have said that these are 17 not all the videos available for purchase, 18 right, in your website? 19 A. Yes. 20 Q. How do you select these videos and 21 excluded others? 22 A. Well, I have to go into each clip and 23 go into a little tab that says access control 24 and add your user. 25 So when I was doing it -- you know,</p>
<p>1 Ross 2 Q. Videos that are not on this list we 3 don't have access to, correct? 4 A. Correct. I think there are just two I 5 missed. 6 Q. I'm sorry. 7 Could you explain what you are saying? 8 A. I think there are two clips I didn't 9 give you access to on this list. 10 Q. That is fine. 11 A. OK. 12 Q. Let's just stay in this document for a 13 while. 14 A. Sure. 15 Q. Orgasmic Women is a video produced in 16 2005, correct? 17 A. Yes. 18 Q. Manual Skills is a video you said you 19 produced around 2000 -- 20 A. '9 or '10. 21 Q. '9 or '10? 22 A. Yes. 23 Q. Orgasm Doctor, 2005? 24 A. Uh-huh. 25 MS. BAUMGARDNER: You have to answer</p>	<p>Page 30</p> <p>1 Ross 2 there are a lot of clips. I might have missed 3 one or two, but I can grant you access. 4 Q. I am going to show you another 5 document. It is another printout of your 6 website. I am going to hand first a copy to 7 counsel. 8 A. Oh, yes. 9 Q. I will give you your copy. 10 A. OK. 11 Q. Don't worry. 12 A. Sorry. 13 MS. BAUMGARDNER: We share. I can 14 share. 15 Q. I am handing a copy to the witness and 16 I have a copy that I am going to mark as RD-2. 17 (Exhibit RD-2 marked for 18 identification) 19 Q. This is a copy of the video portion of 20 your website, correct? 21 A. Correct. 22 Q. Can you take a look at -- it's printed 23 on the front and on the back. 24 A. Oh. 25 Q. Can you just take a look at it and let</p>

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<p>1 Ross 2 me know if these are fair representation of all 3 the videos for purchase in your website? 4 A. Yes. 5 Q. The answer is that this is all that 6 you have available? 7 A. Correct, yes. 8 Q. Now, the first one on the left corner, 9 Betty Dodson Bodysex Workshop? 10 A. Yes. 11 Q. That was produced in what year? 12 A. 2011. 13 Q. And Carlin and Liandra, part I and II? 14 A. Same, 2011. 15 Q. Carlin is your name, too, correct? 16 A. That's me. Maybe that is why I didn't 17 put on it the list. It might have been an 18 embarrassment. 19 Q. You are the performer in this video? 20 A. Yes, I was a performer in that video. 21 Q. You obviously know the other 22 performer? 23 A. Yes. 24 Q. How old is the other performer? 25 A. How old? She's 27.</p>	<p>1 Ross 2 Toys, all of these, the next several, yes. 3 Q. And are these also 2009? 4 A. I think those are 2009 or '10. 5 Q. Do you know the performer in How To 6 Use a Menstrual Cup? 7 A. Yes. 8 Q. Have you provided us with the ID of 9 this performer? 10 A. I don't know. I mean -- 11 Q. You don't know? 12 A. It should have been in the group, but 13 I don't know offhand. I would have to look 14 through it. 15 Q. Let's flip the page? 16 A. OK. 17 Q. There is approximately eight or -- 18 twelve more videos here, right? 19 A. Yes. 20 Q. Sixteen if we count the other page? 21 A. Yes. 22 Q. Side Positions with Hitachi Magic 23 Wand, and the videos that are here, some of them 24 were produced between 2005 and 2009? 25 A. I think these were produced in 2010,</p>
<p>1 Ross 2 Q. 27. OK. Darcy Cures Her Cramps is 3 another video? 4 A. That's part of -- 5 Q. Orgasmic Women? 6 A. Yes, that is an excerpt from Orgasmic 7 Women. 8 Q. How to Use a Menstrual Cup? 9 A. Yes. 10 Q. What year was that produced? 11 A. That was shot by one of our users and 12 that was, gosh -- maybe 2009. 13 Q. So your users shoot videos and send 14 them to you? 15 A. Sometimes. This is a blogger. I'm 16 sorry. 17 Q. 2002, you said? 18 A. 2009. 19 Q. 2009. A Girl Masturbating with a 20 Pearl Necklace and Glass Dildo? 21 A. That is also a blogger, the same one. 22 Q. What year was it produced? 23 A. I think around the same time 2009. 24 Q. Reverse Cowgirl? 25 A. That's the Sex Positions with Sex</p>	<p>1 Ross 2 2009, 2010. 3 Q. All right. I can represent to you 4 that I don't know if we have the IDs for these 5 people. 6 A. You have the IDs for this because this 7 is me and Eric Wilkinson. I did this series. 8 Q. Sex Positions? 9 A. Yes. 10 MS. BAUMGARDNER: That answer just 11 elicited information subject to the protective 12 order. 13 THE WITNESS: Sorry. 14 MS. BAUMGARDNER: I just need to note 15 that for the record, Carlin. 16 Q. I am going to ask for production of 17 all the IDs and model releases for the people 18 depicted in your video for the record. Because 19 I believe we don't have some of them. 20 MS. BAUMGARDNER: For what time 21 period, Hector. 22 MR. BLADUELL: From 2005 on. 23 MS. BAUMGARDNER: That is assuming you 24 don't have them. We will look. 25 MR. BLADUELL: I am sure I don't have</p>

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<p>1 Ross 2 a lot of them. But we'll discuss more IDs and 3 releases shortly. 4 Q. In these exhibits, the videos in 5 Exhibit RD-2, you keep 2257 records for them? 6 A. Correct. 7 Q. For the videos that you produce, do 8 you employ the same performers for all the 9 videos? 10 A. No. 11 Q. You employ different performers? 12 A. Correct. 13 Q. So from video to video they can be 14 different performers? 15 A. Correct. 16 Q. And from year to year they can be 17 different performers? 18 A. Correct. 19 Q. I mean, is it your preference that 20 they would be different performers? 21 A. No. 22 Q. Do you look for new performers for 23 videos? 24 A. No. We don't do that porn thing, no. 25 Q. What do you mean "that porn thing"? I</p>	<p>1 Ross 2 older women. 3 Q. How do you know this? 4 A. There was an article in the Daily Mail 5 that was fascinating. It took by country what 6 is the most popular sex keyword. Australia was 7 "gay men," we were MILF, and then -- what was 8 the UK? I forgot. Anyway -- 9 Q. Do you know the second most used? 10 A. No. They just did the top. 11 Q. Do you know if "teen porn" is one of 12 the most searched? 13 A. I don't know. 14 Q. You don't know. Have you seen young 15 people in the porn you have seen? 16 A. I mean -- 17 Q. Let's say people that resemble 20 18 years old? 19 A. 20? Sure. 20 Q. It is not uncommon to find people that 21 are 20 years old or resemble 20 years old in 22 porn videos, right? 23 A. I guess. I mean, I don't know. 24 Q. In the videos that you have seen? 25 A. Yeah.</p>	
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<p>1 Ross 2 don't understand. 3 A. Well, in porn it's always about 4 someone new, a fresh face. Not necessarily. 5 Like women have been in multiple productions. 6 Q. Have you watched a lot of porn would 7 you say? 8 MS. BAUMGARDNER: Objection. 9 Q. Would you say that you have watched 10 several porn movies? 11 A. Of course, it's the Internet age. 12 Q. You notice this trend -- 13 A. Yes. 14 Q. -- of new people all the time, 15 correct? 16 A. Correct. 17 Q. Do you notice a trend for young people 18 in mainstream porn? 19 A. You know, I don't know. I think now 20 with online porn everything is very niche. 21 Everything is kind of there. I mean, maybe you 22 could make the argument for studio, you know, 23 the big studios, but I don't know -- the most 24 searched sex term in the United States is 25 "MILF", so I think people kind of want to see</p>	<p>1 Ross 2 Q. Is it uncommon to find an 80-year-old 3 in porn videos that you have seen? 4 A. I don't think so. There's a whole 5 genre of GILF films. I don't think that is 6 uncommon. 7 Q. In the mainstream porn industry, is it 8 uncommon to find an 80-year-old? 9 A. I would think so, yes. 10 Q. Is it uncommon to find a 60-year-old? 11 A. Yes. 12 Q. A 50-year-old? 13 A. I don't know. Nina Hartley is still 14 in the game, but I think there are some 15 50-year-olds that are still there. 16 Q. It is more common to find 20-year-olds 17 than 50-year-olds, correct? 18 A. I would imagine. 19 Q. From the videos that you have seen -- 20 A. From what I have seen. I am not an expert. From what I have seen, yes. 22 Q. It is more common to find 20-year-olds 23 than 50-year-olds? 24 A. Correct. 25 Q. How about 30-year-olds, and</p>	

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1 Ross 2 20-year-olds? Are there more 20-year-olds, 3 people in their 20s than people in their 30s? 4 A. I will say that most of the porn stars 5 I know, because we are in sex ed, we rub 6 shoulders, most of them that I know are in their 7 late 20s, early to mid 30s. 8 Q. But in the videos that you have seen, 9 can you say that most people, most of the 10 performers resemble more of the 20s look than 11 the 30s? 12 A. I don't know. Because they always 13 have such large breasts, and I don't know if I 14 could distinguish between 20 and 30. 15 Q. So it is hard to say the age range of 16 the performers? 17 A. Between 20 and 30, some 30-year-olds 18 look really good. 19 Q. When you mentioned the enhanced 20 breasts, you mentioned that you think that makes 21 women look older than they are? 22 A. I think so, yes. 23 Q. Now let's talk a little bit about your 24 IDs. Do you need a break? 25 A. No.	Page 41 1 Ross 2 A. No. 3 Q. So there could have been a couple 4 missed? 5 A. There could have been. That's why -- 6 mea culpa, there could have been a couple. 7 Q. As long as you tell the truth, nothing 8 bad is going to happen. 9 A. Oh, good. I like this. 10 Q. I have been able to count 18? 11 A. So I wasn't so bad at guesstimating. 12 Q. You weren't that bad? 13 A. OK. 14 Q. You keep IDs of more than 18 15 performers, wouldn't you say so? 16 A. Well, there are some multiple people, 17 so, you know, like my license is on file, and 18 I'm in one, two, three, four, five, six, seven, 19 eight, you know what I mean, clips. 20 Q. In that videos page that you have, 21 RD-2 I believe, we established that there's like 22 30 videos, correct? 23 A. Yes. Also just looking at -- where is 24 it? Yes. Celebrating Orgasm. I think that was 25 before the statute, or I mean that's before my
Page 42 1 Ross 2 Q. Let's talk a little bit about your IDs 3 and model releases. 4 You are aware that we've requested 5 production of all of the IDs that you keep and 6 all of the model releases that you keep? 7 A. Yes. 8 Q. Do you know the number of 9 identification cards that you have produced to 10 us? 11 A. I don't know the exact number. 12 Q. Do you know an approximate number? 13 A. 15. 14 Q. 15? 15 A. I don't know. 16 Q. That is close enough? 17 A. That was prepared by an intern, so I 18 just gave her the files. I don't know. I am 19 assuming everything -- 20 Q. Did you check the files before 21 producing documents to us? 22 A. I checked them and then I had her scan 23 them and then I sent it over. 24 Q. Before you sent them over, did you 25 recheck them?	Page 42 1 Ross 2 time. I don't think that we had IDs. We had 3 signed releases, but we didn't have any IDs for 4 that. 5 Q. To your best knowledge, you would say 6 that you have in your possession more than 18 7 IDs of performers? 8 A. I don't know. I believe the number is 9 close. 10 Q. But you don't know? 11 A. Not offhand. 12 Q. OK. 13 A. I don't want to nail down an answer 14 because I already said I missed two clips. 15 Q. Do you have hundreds of IDs for 16 videos? 17 A. No. We haven't produced hundreds of 18 videos. 19 Q. Well, I am going to request 20 production -- 21 A. OK. 22 Q. -- of all the IDs that you have for 23 the videos appearing in RD-1, RD-2, the exhibits 24 that you have not produced. 25 A. OK.

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<p>1 Ross</p> <p>2 MS. BAUMGARDNER: I am going to object</p> <p>3 that, because I believe the production was</p> <p>4 subsequent to the court order, and the Court</p> <p>5 limited the period from January 1, 2005, to</p> <p>6 December 31, 2009.</p> <p>7 MR. BLADUELL: We can discuss the</p> <p>8 scope of the request later.</p> <p>9 MS. BAUMGARDNER: I am making it clear</p> <p>10 for the record because you are implying that our</p> <p>11 production was incomplete.</p> <p>12 THE WITNESS: That's right. It was '5</p> <p>13 to '9.</p> <p>14 MS. BAUMGARDNER: We were operating</p> <p>15 within those confines.</p> <p>16 MR. BLADUELL: OK.</p> <p>17 MS. BAUMGARDNER: You can make your</p> <p>18 request.</p> <p>19 MR. BLADUELL: Yes. I am making the</p> <p>20 request for the record. I am also making a</p> <p>21 request for the videos that we don't have access</p> <p>22 to. I think it is Manual Skills I and II, and</p> <p>23 there was another video.</p> <p>24 A. No, you have access. No?</p> <p>25 Q. I'm sorry.</p>	<p>1 Ross</p> <p>2 Q. It is all paper?</p> <p>3 A. Yes.</p> <p>4 Q. Were the records that you produced</p> <p>5 including people in your Genital Art Gallery?</p> <p>6 A. I believe so, yes.</p> <p>7 Q. How many --</p> <p>8 A. There would only be a few. What's</p> <p>9 left up now is what was before the -- I don't</p> <p>10 know what the cutoff is, remember in 2009 --</p> <p>11 they said just genitals before that it didn't</p> <p>12 need a release and ID.</p> <p>13 Q. How many pictures do you have in the</p> <p>14 Genital Art Gallery?</p> <p>15 A. Up now? A hundred, two hundred.</p> <p>16 Q. 200?</p> <p>17 A. I think.</p> <p>18 Q. You don't keep IDs of all of those</p> <p>19 people?</p> <p>20 MS. BAUMGARDNER: Objection.</p> <p>21 Go ahead and answer.</p> <p>22 A. OK. No, because the majority of that</p> <p>23 gallery was under Betty's old website, which was</p> <p>24 produced in the '90s, I think it was '88 it</p> <p>25 launched, and she started doing that. So they</p>
Page 46	Page 48
<p>1 Ross</p> <p>2 A. Carlin & Liandra that was probably a</p> <p>3 Freudian weird thing that happened in my head.</p> <p>4 Q. So I would like to see all the videos</p> <p>5 on my account.</p> <p>6 A. I will get them for you for the</p> <p>7 weekend.</p> <p>8 Q. Thank you.</p> <p>9 A. You have to laugh about these things.</p> <p>10 Q. Yes, no problem.</p> <p>11 Are there any documents showing how</p> <p>12 many performers you have employed other than the</p> <p>13 IDs?</p> <p>14 A. No.</p> <p>15 Q. You don't make a summary?</p> <p>16 A. No.</p> <p>17 Q. Would the model releases show how many</p> <p>18 performers you have?</p> <p>19 A. Well, yes.</p> <p>20 Q. OK. So there are other records other</p> <p>21 than the IDs? There are the model releases?</p> <p>22 A. Yes.</p> <p>23 Q. Do you keep a database of the names of</p> <p>24 the people online?</p> <p>25 A. No.</p>	<p>1 Ross</p> <p>2 were before the new regs on the statute. So</p> <p>3 they wouldn't -- if it was just a genital, it</p> <p>4 didn't have to have the signed release. So</p> <p>5 there was no process where she did that. So I</p> <p>6 kept up what was all the old ones.</p> <p>7 Q. But since 2009 you have been</p> <p>8 requesting IDs of the people?</p> <p>9 A. Yes.</p> <p>10 Q. So you have some IDs?</p> <p>11 A. We have like two.</p> <p>12 Q. You have two?</p> <p>13 A. I think we have two.</p> <p>14 Q. Can you identify the initials of the</p> <p>15 people that you know that you keep IDs in the</p> <p>16 Genital Gallery?</p> <p>17 A. I don't know offhand. I know by the</p> <p>18 image of their genitals, but I don't know their</p> <p>19 names.</p> <p>20 Q. I am going request production of the</p> <p>21 initials and the dates of birth so we can verify</p> <p>22 that we have the records for the record.</p> <p>23 A. OK.</p> <p>24 Q. Now, you don't have records for a lot</p> <p>25 of the people in the Genital Art Gallery?</p>

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<p>1 Ross 2 A. Correct. 3 Q. But you still post those pictures up, 4 correct? 5 A. Correct. 6 Q. How do you know that there's no minor 7 that is depicted there? 8 A. Well, we asked them to send in a sex 9 essay about their sex life and their sexual 10 development. 11 So they are writing about being 12 married and having children and pregnancy and 13 sex postpregnancy, and, you know, some of them 14 have graying pubic hair. I am not an expert in 15 looking at someone's genitals, I know, and 16 saying what the age is, but there are times I 17 think there are clearly of majority. 18 Q. There are sometimes that it's 19 difficult to tell? 20 A. Yes. Over the years Betty has had 21 people send in things that she didn't put up. 22 Q. So you rely on their essays to 23 determine their age and insure -- do you try to 24 insure that there are no minors in this -- 25 A. Our website is about women. We're</p>	<p>1 Ross 2 if the person looks 25 or above, you don't have 3 to ask for a license. Like I was a bartender in 4 college, and they would say if they looked under 5 25, so you are making that judgment. 6 Q. The ID would show if someone is under 7 18 or not? 8 A. Of course. 9 Q. A government-issued ID would be a good 10 indication, correct? 11 A. Correct. 12 Q. That ID would help you to be more 13 sure, right, about someone's age? 14 A. Correct. 15 Q. I'm going to show you another 16 document. 17 MR. BLADUELL: This is going to be 18 RD-3 I believe. 19 It is a document that you are familiar 20 with hopefully. It is responses to first and 21 second set of interrogatories. 22 A. OK. 23 (Exhibit RD-3 was marked for 24 identification) 25 MS. BAUMGARDNER: First and second</p>
<p>1 Ross 2 feminists. We are not about exploiting young 3 girls. Absolutely not. So, yes, it could go 4 against my brand. I would never want a minor in 5 there, ever. 6 Q. But you rely on what they write to 7 know if they are over 18, correct? 8 A. And the look of their genitals. 9 Q. Is it possible that they could lie. 10 Is it possible that someone could lie about 11 being 18? 12 A. I don't think so. I don't think any 13 young child wants to take an image of their 14 genitals and upload it to a site for no money. 15 There are so many sites where you can upload 16 images and make money off them. 17 Q. It is just possible that someone could 18 lie? 19 A. Everything is possible, yes. 20 Q. Right? 21 A. Yes. 22 Q. Are you aware of instances where 23 minors have tried to lie about their age to get 24 into clubs? 25 A. Of course. But don't bouncers rely --</p>	<p>1 Ross 2 set? 3 MR. BLADUELL: First set. I am going 4 to give a copy to counsel for the record. It's 5 going to be interrogatory No. 9. 6 Q. Actually, can I switch the copy. 7 A. Sure. 8 Q. I marked that one, and I want to keep 9 it for the record. I am going to give you 10 another one. It's interrogatory No. 9. 11 A. Uh-huh. 12 MS. BAUMGARDNER: You have to answer 13 verbally, Carlin. 14 THE WITNESS: Yes, I'm sorry. I am 15 such an "uh-huh" person. 16 Q. You have seen this document before, 17 correct? 18 A. Yes. 19 Q. This document asks you to identify for 20 each such age group whether the total number of 21 depictions is more than five, greater than ten, 22 greater than twenty, greater than fifty, greater 23 than one hundred, greater than one thousand. 24 A. Uh-huh. 25 Q. If you flip the page, on page 6, we</p>

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1	Ross	1	Ross
2	have your answers.	2	certain procedures?
3	A. Yes.	3	A. Yes.
4	Q. You said, "We are unable to provide	4	Q. To look younger?
5	data for many images produced throughout the	5	A. I don't know. The ideal look of a
6	years," correct?	6	vulva, a clamshell, which means if there's any
7	A. Yes.	7	little dangling inner lips they cut them off,
8	Q. Why do you say you are unable to	8	and now labioplasty is the number one plastic
9	provide data for many images throughout the	9	surgery procedure requested by women in the
10	years?	10	United States, and now it's going across to
11	A. I believe that is the Genital Art	11	Europe. And then they bleach everything so that
12	Gallery. At that time it wasn't a legal	12	it's pink. The whole point is no brown. I
13	requirement to request someone's ID so we just	13	don't know why they do it --
14	didn't collect it.	14	Q. But does that make them look younger
15	Q. Do you believe that the images in the	15	than they really are? Is that the purpose?
16	Genital Art Gallery fall under the statute?	16	A. I don't know if that's the purpose.
17	A. No, I don't.	17	Q. Well --
18	Q. You don't believe so?	18	A. There is a range of looks of vulvas,
19	A. No.	19	different styles.
20	Q. Why don't you believe so?	20	Q. I think you said that the purpose was
21	A. Because as a now sex educator I can	21	to make them look like a little girl.
22	tell you we've traveled the world, from Cuba to	22	A. I don't know what the purpose is. I
23	Scandinavia, and the number-one issue people	23	can't really speak for them.
24	have that keeps them from having good sex, which	24	Q. Didn't you say that, that the purpose
25	is about intimacy and relationships, is genital	25	was to make them look like a little girl?
	Page 54	Page 56	
1	Ross	1	Ross
2	shame.	2	A. I said I don't know after that. I
3	And I don't want to censor porn, but	3	don't know why they do it. You could make the
4	the majority of vulvas in pornography have been	4	argument so that it's so that they look younger.
5	surgically enhanced. They clip the inner lips,	5	You could make that argument.
6	they bleach the vagina, they bleach the asshole.	6	Q. If it is a hundred percent successful
7	So it is to maybe look like a little girl. I	7	surgery, that would make them look young -- and
8	don't know what their intent is.	8	if it is to look for them to look like a little
9	People look at those images, and if	9	girl, then it would make them look younger,
10	they don't see something that looks like them	10	correct?
11	they think they are deformed.	11	A. I guess. You could make the argument,
12	The same thing for men. They are	12	that removing the pubic hair and clipping the
13	choosing men that are very large, most of them	13	inner lips and dyeing everything pink, bleaching
14	are circumcised. So we have a lot of people	14	everything pink you could make the argument; or
15	writing in saying, I can't have sex with someone	15	it could be a style, because some women are born
16	because I think there's something wrong with me,	16	with pink and there are no inner lips, some
17	which is why Betty started the Genital Art	17	women have that style but it's probably, from
18	Gallery, so you can see a real image of a real	18	what we gather, like 10, 15 percent.
19	person, which is why anonymity is important,	19	Q. What other purpose would there be if
20	because real people with day jobs and wives and	20	they're doing this procedure than to resemble a
21	husbands and kids don't want their license	21	little girl and to look younger, what other
22	floating around and someone can find out that	22	purpose?
23	they've done something like that.	23	A. That's a style. You know, why do we
24	Q. You said in your answer right now that	24	like, you know, the waif look? Why do we like
25	in mainstream porn women sometimes undergo	25	Twiggy? It could be a style.

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	Page 57	Page 59	
1	Ross	1	Ross
2	Q. The style to look younger?	2	the witness a document called the Genital Art
3	A. I don't know what their intent is	3	Gallery artist statement. I'm handing a copy to
4	because we don't do that. So it could either be	4	counsel. And I'm going to mark this as Exhibit
5	looking younger or it could be like a style.	5	RD-4.
6	Q. What kind of style would that be?	6	(Exhibit RD-4 was marked for
7	A. The clamshell. That's what it's	7	identification)
8	called, the clamshell style.	8	THE WITNESS: The first time I heard
9	Q. This clamshell style, what is the	9	about labioplasty was on Howard Stern. He would
10	style? Can you describe what it is?	10	have the porn stars come on and they would talk
11	A. A style. So there is a range of	11	about clipping the inner lips and the procedures
12	genitals and how they look. The majority of	12	they would undergo. I guess this was in the
13	women have dangling inner lips, and the outside	13	'80s. And I had never heard of that, and now
14	of them are a little brown. But some women it's	14	it's the number one procedure women request.
15	completely closed and it's pinker. Like	15	Q. Do they say why they do this?
16	anything in life, there is a variation in the	16	A. I guess it must be the most pleasing
17	appearance of the body.	17	aesthetic. Why do supermodels starve
18	Q. Do young girls have this clamshell	18	themselves? It must be what the industry wants.
19	look, resemble the clamshell look?	19	Q. It would help them get more business?
20	A. Oh, I know what you're getting at.	20	A. Yes, they would make more money.
21	No. It is a style. Some little girls have	21	Q. Now, if we look at the third paragraph
22	dangling inner lips from the get-go. That's the	22	in this RD-4, the Genital Art Gallery artist
23	way it is.	23	statement. It says, "Today many women in the
24	Q. Do you know if most little girls have	24	adult industry have undergone surgery for
25	this clamshell style look?	25	removal of their extended inner lips to achieve
	Page 58	Page 60	
1	Ross	1	Ross
2	A. That I don't know.	2	what one surgeon calls the clamshell look,
3	Q. You have not seen a lot of --	3	reminiscent of a prepubescent girl."
4	A. No.	4	A. Yes.
5	Q. But you do have some kind of knowledge	5	Q. "Other women began to want a similar
6	that this clamshell look is to make, it could be	6	work."
7	to make people look like little girls because	7	Do you think that statement is
8	you just said that, right? You didn't make that	8	accurate?
9	up, correct?	9	A. This is Betty's statement, and, yes,
10	A. No.	10	it's accurate. Betty can say. She's the
11	Q. You didn't lie about it, right?	11	oracle.
12	A. The purpose could be. I mean, you	12	Q. This is a similar statement that you
13	should depose Hugh Hefner and ask him, and some	13	just made, correct?
14	of the other --	14	A. Well, no. My statement was about why
15	Q. Maybe I will.	15	people in the adult industry -- and I can't
16	A. -- multimillion dollar pornographers	16	speak for them, so that's why I'm saying I don't
17	because maybe they could shed light on it.	17	know what the intent is, but it would seem that
18	MS. BAUMGARDNER: Or the women.	18	it was because you would look younger.
19	Q. Let me show you a document.	19	Q. A prepubescent girl is how old?
20	A. Sure.	20	A. I don't know. Just probably --
21	MS. BAUMGARDNER: Are we done with	21	Q. 12, 13?
22	this one?	22	A. I would imagine, prepubescent.
23	MR. BLADUELL: No. We'll hold it.	23	Q. There are no 10 or 13-year-olds in the
24	MS. BAUMGARDNER: Can I have a copy?	24	porn industry that you know of?
25	MR. BLADUELL: I'm sorry. I'm handing	25	A. No, not that I know of.

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1	Ross	1 Ross
2	Q. It would be a crime, right?	2 Q. So all of thee categories would be
3	A. Yes.	3 greater than 5?
4	Q. It would be child pornography?	4 A. Probably greater than 5, yes.
5	A. Yes.	5 MS. BAUMGARDNER: I just want to
6	Q. So most of the women in the adult	6 object.
7	industry are over 18, correct?	7 MR. BLADUELL: I'm sorry. She has no
8	A. Correct.	8 question. You cannot interrupt. If you have an
9	MS. BAUMGARDNER: Objection.	9 objection note it for the record. Do not coach
10	Q. If you know?	10 the witness.
11	A. Well, I would imagine, since you	11 MS. BAUMGARDNER: I am not. I am
12	haven't busted them, that they are.	12 pointing out that the question asks for the
13	Q. The purpose that they undergo this	13 number of depictions, not the number of
14	procedure is they could look like a prepubescent	14 performers.
15	girl that is around 13 or 14, correct?	15 MR. BLADUELL: OK.
16	MS. BAUMGARDNER: Objection.	16 THE WITNESS: Oh.
17	A. I assume, yes.	17 MS. BAUMGARDNER: I think your
18	Q. Yes?	18 question was misleading.
19	A. Yes.	19 Q. Does that change your answer?
20	Q. Thank you. Let's continue on	20 A. Let me think about it. So each
21	interrogatory No. 9. It asks about the	21 depiction is one. Now I'm confused.
22	breakdown of ages.	22 Q. Would it still be fair to say that it
23	A. You see we have some 62-year-olds.	23 would be greater than 5 for all categories?
24	Q. Well, let's go back to page 5.	24 A. Yes.
25	A. OK.	25 Q. Accurate to say that?
	Page 62	Page 64
1	Ross	1 Ross
2	Q. Would you say that the number of	2 A. Yes.
3	people 18 to 25 in your depictions and images is	3 Q. Now, if we flip the page, page 6.
4	greater than 50?	4 Images on the Genital Art Gallery were
5	A. No.	5 submitted by people ranging from 20 years of age
6	Q. It is greater than 20?	6 to 83 years of age?
7	A. No.	7 A. Correct.
8	Q. It's greater than 10?	8 Q. Do you see that?
9	A. No.	9 A. Yes.
10	Q. Greater than 5?	10 Q. How do you know that they range from
11	A. Yes.	11 20 to 83?
12	Q. And 26 to 35, it would be greater than	12 A. When they make their submission we
13	20?	13 have them include their age. We don't publish
14	A. No.	14 that. Since it's not published, I feel that
15	Q. Greater than 10?	15 they probably tell the truth.
16	A. Yes.	16 Q. So this is based on the model
17	Q. 36 and 45, greater than 5?	17 releases, on the releases, right?
18	A. Yes.	18 A. Yes.
19	Q. Greater than 50?	19 Q. It's not based on IDs that you have?
20	A. No.	20 A. No.
21	Q. Greater than 20?	21 Q. You said that you have a hundred of
22	A. No.	22 these releases?
23	Q. I mean, you said you don't have that	23 MS. BAUMGARDNER: Objection.
24	many. You don't have more than 20 performers?	24 Go ahead.
25	A. That's what I am saying, so 20.	25 A. No licenses or releases were used

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1 Ross 2 a lot of time doing this because we really focus 3 on women, so it's never an issue. But how I 4 aged someone when I was tending bar through 5 college and law school, yes, I believe I knew 6 when someone was 25. 18 to 20 is harder to 7 tell. 8 Q. That is all I am asking. 9 A. Yes. 10 Q. Thank you. 11 You don't have any formal education in 12 determining a person's age -- 13 A. No. 14 Q. -- by facial observation? 15 A. No. 16 Q. So you agree with me it is difficult 17 to say a person's exact age with a hundred 18 percent confidence only by visual inspection? 19 A. Correct, yes. 20 Q. It's difficult by visual observation 21 of an image to say someone's exact age? 22 A. Correct. 23 Q. Or even if someone is 25? 24 MS. BAUMGARDNER: Objection. 25 A. I think you can within a five-year	1 Ross 2 Q. Do you need a break? 3 A. No, not right now. 4 Q. I'm going to show you an image, and 5 I'm going to label it as RD-6. 6 A. Are you testing me now. 7 Q. I get to ask the questions. 8 A. Oh, no. 9 (Exhibit RD-6 was marked for 10 identification) 11 MR. BLADUELL: For the record, I have 12 provided an image RD-6 to the witness. Have you 13 seen this image before? 14 A. I have not. 15 Q. Can you tell if this person is clearly 16 mature? 17 A. She looks mature, so I guess yes. 18 Q. In your view is this person clearly 19 mature? 20 A. It don't know the. Breast implants 21 throw me off. Yes, she looks like a woman to 22 me, yes. 23 Q. That is not my question. My question 24 is, can you tell with a hundred percent 25 confidence that this person is clearly mature?	
	Page 78	Page 80
1 Ross 2 span kind of guess what someone's age is by 3 looking at a visual -- I mean, you can look at 4 someone and say if they're 40. You can look at 5 someone and say if you think they're 30, if 6 they're 20. I think that's clear. 7 Q. But an exact age is impossible? 8 A. Yes, of course. 9 Q. Is it impossible? 10 A. I wouldn't say it's impossible there 11 might be someone who can do it. I can't. 12 Q. Would having an ID of the person that 13 you have a depiction of increase your confidence 14 in that person's age? 15 A. Yes and no, because we get a lot of 16 international submissions, so I don't know how 17 to know whether or not an international license 18 or passport is forged or not, I mean, really. 19 Q. I am going to show you other documents 20 so bear with me for a second. You can have a 21 sip of water. 22 THE WITNESS: What time is it? 23 MS. WYER: It's 10:15. 24 THE WITNESS: OK. I just want to give 25 Betty a wakeup call.	1 Ross 2 MS. BAUMGARDNER: Objection. 3 A. Yes, I think she's mature. 4 Q. By mature, you mean what age? 5 A. You want me to give her an age now? 6 Q. If you can. 7 MS. BAUMGARDNER: Objection. I think 8 this is completely unfair. But go ahead. 9 A. I don't know. I would put her in the 10 18-to-24 bracket. You never know. People of 11 color they can be much older and look young. 12 Are you going to tell me her age now? 13 Q. I get to ask the questions. 14 A. OK. 15 Q. Exact age, can you tell with a hundred 16 percent confidence how old exactly this person 17 is? 18 A. No. I thought you were going to show 19 me her vulva. 20 Q. Maybe. 21 A. I am just teasing you. I'm sorry. 22 MS. BAUMGARDNER: Hector, I would like 23 to take a break when it's convenient. 24 MR. BLADUELL: OK. Thank you. 25 Q. I am going to show you another	

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1 Ross
2
3 CERTIFICATE
4
5 STATE OF NEW YORK)
6 : ss
7 COUNTY OF NEW YORK)
8
9 I, Samuel Mauro, Jr., a Registered
10 Merit Reporter and Notary Public within and for
11 the State of New York, do hereby certify:
12 That CARLIN ROSS, the witness whose
13 deposition is hereinbefore set forth, was duly
14 sworn by me and that such deposition is a true
15 record of the testimony given by such witness.
16 I further certify that I am not
17 related to any of the parties to this action by
18 blood or marriage and that I am in no way
19 interested in the outcome of this matter.
20 In witness whereof, I have hereunto
21 set my hand this _____ day of
22 _____.
23
24
25 SAMUEL G. MAURO, RMR

In The Matter Of:

Free Speech Coalition Inc., et al. v.

The Honorable Eric H. Holder, Jr., Attorney General

Steven David Steinberg

April 19, 2013

Behmke Reporting and Video Services, Inc.

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1 because I really like film, and I like -- I'm just stuck
2 in my ways.

3 Q. Do you develop the film yourself?

4 A. No. I have a lab that does my -- all of my
5 developing and printing.

6 Q. And you only take black and white?

7 A. I take a little bit of color, but -- and Cupido
8 encourages me. They want more color, but I mostly do
9 black and white. I think it's more artful. And,
10 especially in the realm of sexual photography, I'm
11 trying to take my photography out of the mindset that
12 people are used to with sexual photography, which is
13 related to commercial pornography, which is almost all
14 in color. So being in black and white helps put me in a
15 different category.

**16 Q. You mentioned your very first photo shoot ended
17 up being in Cupido?**

18 A. Yes.

**19 Q. So did you -- did your photography become
20 commercial, something you did for money right away,
21 then?**

22 A. Yeah, it did. It was quite surprising.
23 Barbara Nitke -- not to take up your time, but Barbara
24 Nitke, when I work, I have always admired. I showed her
25 some of my initial photographs. And she said, "David,

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1 you have to take this seriously. How often do you come
2 on something that's useful that you do well, that's fun
3 to do, and that you can make money from?"

4 So at that point it was just kind of a lark for
5 me. But at that point I really started saying, "Oh, I
6 can do something significant with this. And, plus, all
7 of a sudden everybody I knew wanted to be photographed.

**8 Q. Since the time you started as a photographer,
9 what has -- how has your career progressed?**

10 A. Well, initially, it was for Cupido. Initially,
11 it was people I knew. It's expanded. People have seen
12 my work. People have asked to reproduce my work. I now
13 get requests from strangers who want me to photograph
14 them. I've been in lots of art shows. I've won awards.
15 I was declared erotic photographer of the year in 2010,
16 I think it was, by the Leydig Trust in London. I was
17 declared one of the first of the initial five masters,
18 so-called masters of erotic art by the Seattle Erotic
19 Art Festival last year.

20 And I have a following now. I think people
21 appreciate sexual photography that's genuine, that you
22 would look at them and say, "Oh, these are regular
23 people. This could be me in this photograph." When I
24 show my work, that's mostly what people respond to,
25 because I don't pose my models. I don't tell them what

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1 to do. I just say, "Try to be natural and be yourself.
2 I'm just trying to document who you are.

3 Also, I've done a number of specialties,
4 including older people, people who are not
5 traditionally, quote, "beautiful." Heavy people. I'm
6 doing a whole series of people with disabilities who's
7 sexuality nobody takes seriously. Because one of the
8 messages in the work that I'm trying to do is that you
9 don't have to be young and thin and glamorous to be
10 sexually attractive and wonderful sexually.

**11 Q. When you take these photographs, where do
12 you -- where does it happen?**

13 A. Almost always I photograph people where they
14 live, because I think that's where people are most
15 comfortable. I don't work in studio. I have debates
16 with other photographers about that. But I'm convinced
17 that, at least for the photography that I'm interested
18 in, which, as I say, is getting people to be honest and
19 natural and genuine. The best place to have that happen
20 is when they're at home.

21 Q. Do you use lighting, specialized lighting?

22 A. Yeah, I have basic lights, two tripods with hot
23 lights and umbrellas. And I move my lights around,
24 again, because I don't pose people. I don't say, "Be
25 here. Do this." Sometimes people will say, "Well, what

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1 do you want us to do?" And I say, "Well, it's up to
2 you."

3 I mean, the whole thing that I do is to try to
4 make people feel comfortable with me, comfortable with
5 the unnatural situation of being photographed while
6 being sexual, so that hopefully they can be sexual in
7 more than a superficial way. And then I get the
8 photographs that I think really had something to say
9 about being sexual people.

**10 Q. So at this point -- I mean, from the time you
11 became a photographer, did you make your living from
12 doing that?**

13 A. Partially, I do. It's not the only thing I do
14 for money, but yeah. Yeah, pretty much from the time I
15 started I started earning income from it.

16 Q. What are the other components of your income?

17 A. I have a business that I've owned for 30 years,
18 selling herbs and teas and spices to health food stores
19 in Santa Cruz. I mean, I make some money from my
20 writing. And at this point -- I mean, I'm 68 years
21 old -- a fair amount of my income comes from investments
22 that I get dividends from.

23 Q. Between --

24 A. Oh, and, sorry, Cupido, where I get commissions
25 on the work of other people's photography that I sell to

<p style="text-align: right;">Page 25</p> <p>1 them or that I broker to them. And, of course, when 2 they use my photographs, they pay me for them. So in 3 addition to my photography, I'm also -- there's like the 4 agenting income that I have.</p> <p>5 Q. So "Photo Sex" was published in 2003. Do 6 you -- were the photographs included in that book 7 created at around the same time period that the book was 8 published?</p> <p>9 A. No, some of them were quite earlier. I don't 10 know when all the photographs were created, but I know 11 that some of them were definitely from the '80s and '90s 12 and so on. Some probably -- actually, some from earlier 13 than that, '60s and '70s. Some of them were, you know, 14 right before 2003, as well.</p> <p>15 Q. And then your next -- your book "Divas of San 16 Francisco," was that a specific project that you 17 undertook during a certain time period?</p> <p>18 A. Uh-huh, yes.</p> <p>19 Q. When was that?</p> <p>20 A. Let's see. I think the first -- Divas of San 21 Francisco is a name of a night club. It's a club in San 22 Francisco, a transsexual club. It's the largest 23 transsexual club in the country. I've been a fan of the 24 club and hanging out at the club for many years. And, 25 initially, Spectator Magazine wanted me to take some</p>	<p style="text-align: right;">Page 27</p> <p>1 years all mixed up. And at that point I decided if I 2 was going to have a show at a major gallery, I wanted to 3 have a book to go with the show, and I put the book 4 together.</p> <p>5 Q. Does 2008 sound like the right year for that?</p> <p>6 A. It's plausible. Sorry I don't have all the 7 chronology in front of me.</p> <p>8 MS. BAUMGARDNER: That's okay. Ms. Wyer will 9 tell you you don't have to guess.</p> <p>10 THE WITNESS: I'm sure you can get that from 11 all of that right there.</p> <p>12 This is very different. This is nonsexual 13 photography. This is just photographs of women. There 14 are, I think, 59 photographs in the book, of which only 15 four are full-body nudes where, for example, you see 16 people's genitals. But that's not the point of the book 17 at all. The point of the book was to do portraits and 18 photographs that give the viewer more than a superficial 19 sense of who this person is that they're looking at.</p> <p>20 BY MS. WYER:</p> <p>21 Q. Did that -- how many years were you engaged in 22 that project?</p> <p>23 A. I think the first pictures that I took of 24 people from Divas was 1993, and then it was 2008. So 25 that's 15 years, and I still do photography there. I</p>
<p style="text-align: right;">Page 26</p> <p>1 photos there when Divas started having topless shows two 2 nights a week. So I photographed some of the dancers 3 there. But as I got to know them, I also got interested 4 in photographing them when they weren't performing. So 5 I ended up doing lots of, essentially, portrait 6 photography of what I think is an extraordinary group of 7 women.</p> <p>8 And then at some point I had a -- let's see. I 9 guess the first show of those photographs that I had was 10 at the Center for Sex & Culture in San Francisco. I'm 11 sorry, the first show I had was at a meeting of 12 sexologists at the Society for the scientific study of 13 sexuality, which is a professional organization I've 14 been a member of for many years. And they expressed 15 interest in these photographs, and I had a show of those 16 photographs at one of their conventions and then a show 17 of the photographs at the Center for Sex & Culture.</p> <p>18 Q. Do you remember when those shows were?</p> <p>19 A. No, I don't. It should be on the list that we 20 submitted to you, but I don't remember.</p> <p>21 And then I had a well-respected fine art 22 photography gallery in Seattle, called Benham Gallery, 23 B-E-N-H-A-M, who expressed interest in the photos. And 24 I had a big show up there. It would be right at the 25 same time that the book was published. I really get the</p>	<p style="text-align: right;">Page 28</p> <p>1 took photos there last week. I do photographs at the 2 club. I do photographs of some of the women at home. 3 Sometimes -- I live two blocks from the club. Sometimes 4 people come back to my place and we do photographs 5 there.</p> <p>6 Q. So that's not something that has stopped?</p> <p>7 You're still engaged in that?</p> <p>8 A. I'm still engaged in, yes, doing the 9 photographs. I haven't published any -- Cupido 10 occasionally publishes one or two of those photographs. 11 I have not published any of those photographs since 12 Divas was published. And since I've been talking with 13 Lorraine -- I mean, people ask me when am I going to do 14 a second book. But at this point I don't think I could 15 do a second book because I think I would be required to 16 add 2257 information for all the people in the book, 17 even though these are nonsexual photographs and I don't 18 have that information.</p> <p>19 MS. WYER: I'd like to mark this as Steinberg 20 2.</p> <p>21 (Whereupon, Defendant's Exhibit No. 2 was 22 marked for identification.)</p> <p>23 BY MS. WYER:</p> <p>24 Q. Do you recognize this?</p> <p>25 A. Yeah, it looks like my LinkedIn profile. My</p>

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1 that's essentially complete.

2 **Q. And in terms of your photographic work, you**
 3 **mentioned the adult couples having sex, photography that**
 4 **you do. And you've mentioned the photographs of -- is**
 5 **it of performers at the Divas of -- did you say Divas of**
 6 **San Francisco was the name of a club?**

7 A. Yes.

8 **Q. And the photographs that you take are of**
 9 **performers at that club?**

10 A. Not entirely. Sometimes it's performers.
 11 Sometimes it's bartenders. Sometimes it's just people
 12 who are patrons of the club. It started with the
 13 performers but it has expanded. I would say at this
 14 point most of the people I photograph are nonperformers.

15 **Q. And other than those two topics, does your**
 16 **photography encompass any other subjects?**

17 A. In the last, what is it now, three years I've
 18 been doing still photography at photo shoots at
 19 kink.com, which is a producer of BDSM porn films in San
 20 Francisco. They run a number of websites. One of their
 21 websites is called "Public Disgrace." And, initially,
 22 from an article that I wrote for Cupido about kink.com,
 23 I got connected with the people at Public Disgrace. And
 24 I've been doing a project of taking still photographs at
 25 some of their shoots. I've shown some of those

1 **you know what that means in the context of the statute**
 2 **at issue in this case, which is 18 U.S.C. 2257?**

3 A. I don't believe that anybody knows what that
 4 means in terms of the statute. I don't think the
 5 statute is the least bit clear about that. And it's one
 6 of the problems with the statute, is that nobody can
 7 figure out what the hell it's talking about.

8 **Q. But you're familiar with that phrase as**
 9 **something --**

10 A. Yes.

11 **Q. -- in the statute?**

12 A. Yes.

13 **Q. So when I use that phrase, can we agree that**
 14 **I'm talking about the phrase as used in the statute and**
 15 **regulations?**

16 A. I'm familiar with it. If you were to ask me
 17 which of my photographs are sexually explicit according
 18 to the statute and which are not, I don't think I can --
 19 there are some photos, I think, that are obviously not
 20 sexuality explicit. There are some photographs that
 21 are, in my mind, sexually explicit. And then there
 22 would be a whole bunch in the middle that I don't know
 23 how the statute would interpret them.

24 **Q. Is there a -- you've described, I think, some**
 25 **of your rationale or motivations for the kind of**

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1 photographs in art shows, but I haven't published any of
 2 those photographs to date.

3 **Q. Is that something that they commission from you**
 4 **or pay for?**

5 A. No.

6 **Q. It's something you asked them to allow you to**
 7 **do?**

8 A. The circumstance of Public Disgrace is that
 9 there's an audience of people, and people in the
 10 audience are allowed and encouraged, actually, to take
 11 photographs for private use. Because I was doing --
 12 initially, this was before the story that I was doing
 13 for Cupido. Then I had to ask them for permission to
 14 use photographs that I had taken there for that purpose,
 15 and I obtained permission for that.

16 And when I've had shows I've had to ask them
 17 for permission to show photographs that I've taken at
 18 those shows, and they've granted me permission. So I
 19 believe that technically I own the photographs, but I
 20 don't have permission to do anything with them without
 21 their permission.

22 **Q. Are the photographs you take -- they're of what**
 23 **would be considered sexually explicit conduct?**

24 A. Some of them are and some of them are not.

25 **Q. And when I say "sexually explicit conduct," do**

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1 **photographic work that you do. How would you describe**
 2 **the difference in terms of the visual difference between**
 3 **your work and what would be considered mainstream**
 4 **pornography? Do you agree with the use of the term**
 5 **"mainstream pornography" to describe the adult industry,**
 6 **or is there another term you would use?**

7 A. That's pretty good. I usually use "commercial
 8 pornography," because, to me, what you're calling
 9 "mainstream pornography -- there's a whole distribution
 10 network. There's a whole -- so I usually say
 11 "commercial pornography," but "mainstream pornography"
 12 is fine. I think we would be talking about the same
 13 thing.

14 **MS. BAUMGARDNER:** And I'll show an objection to
 15 that. I think there were multiple questions in that.

16 **BY MS. WYER:**

17 **Q. Okay. So, first, we're agreed on the use of**
 18 **the term "commercial pornography" or "mainstream**
 19 **pornography" to refer to what could be called the "adult**
 20 **industry," or -- I don't know how to define it, but --**

21 A. I don't -- that's one of the -- for example, is
 22 Cupido Magazine part of what you're calling the "adult
 23 industry"? Cupido Magazine would say, absolutely not.
 24 People in Norway would say, absolutely not; it's sold at
 25 drug stores and supermarkets, not in porn shops. And it

<p>Page 37</p> <p>1 was created as an alternative to so-called mainstream 2 pornography in Norway. But you might think Cupido was 3 mainstream pornography. I don't.</p> <p>4 Q. Is that -- is it a subject determination?</p> <p>5 A. Definitely. Unless you can show me a 6 definition, then I can say, you know, "If you're" -- in 7 Norway the law is very clear. If genitals are 8 touching -- they've changed the law now. Until 9 recently, if genitals were touching, then it was 10 illegal. If there was the slightest bit of space 11 between the genitals touching, then it was legal.</p> <p>12 If you have a definition like that, then you 13 can say, "Okay, this is in Category A; this is in 14 Category B." We do not have anything like that in this 15 country, which is one of the problems with laws trying 16 to regulate sexual imagery. So nobody knows what the 17 boundary line is.</p> <p>18 I could show you 100 photographs, and I'd say, 19 "You tell me which of these are pornographic and which 20 are not."</p> <p>21 Q. Are you familiar with different genres of 22 pornography, such as what could be called "amateur 23 pornography"?</p> <p>24 MS. BAUMGARDNER: Objection.</p> <p>25 THE WITNESS: I've heard of people talking of</p>	<p>Page 39</p> <p>1 A. So subjective means -- this is my point of 2 view. My point of view, I believe that the purpose of 3 most -- what you're calling mainstream pornography is to 4 turn people on, to arouse people. Pornography has been a 5 masturbation tool for most of its existence in this 6 country. I think that the people who make mainstream 7 pornography, for the most part, want to turn people on.</p> <p>8 The purpose of my photography is not to turn 9 people on. Although, it may turn people on. The 10 purpose of my photography is to say something about 11 sexuality other than "Oh, look, sex is happening and we 12 get to watch." I want it to, as with all art, make a 13 statement about the important aspect of existence that 14 is human sexuality. This is what people are really 15 like. This is what intimacy is about. This is what 16 emotional connection with another human being is about 17 through being sexual. That's what I'm going for in my 18 photography.</p> <p>19 Whether other -- although the purpose of my 20 photographs is not to turn people on, it may turn people 21 on. Although the purpose, it seems to me, of most 22 commercial pornography is to turn people on, it may also 23 be making a statement about human sexuality. I just 24 don't think that that's generally the prime purpose. So 25 in that way, that's how I see my work as being different</p>
<p>Page 38</p> <p>1 amateur pornography.</p> <p>2 BY MS. WYER:</p> <p>3 Q. And what does that mean, in your understanding?</p> <p>4 A. Some combination of people who are genuinely 5 amateur, in the sense of not having any monetary 6 interest, doing sexual pornography. But probably more 7 often people pretending to be amateurs, as a way of 8 marketing their own commercial pornography.</p> <p>9 Q. Can you identify any objective differences 10 between your photographic work and what could be called 11 "amateur pornography."</p> <p>12 MS. BAUMGARDNER: Objection.</p> <p>13 THE WITNESS: Objective differences, no. I 14 could identify subjective differences, but not -- I 15 don't think there are any. I mean, I don't know what 16 objective -- I'm a mathematician. I know what objective 17 is. I don't think that objective -- that the word 18 "objective" pertains, unless you say, "If the genitals 19 are touching, then it's this. And if they're not, then 20 it's that." Then you have an objective criterion to 21 judge with. You know, "I know it when I see it" is not 22 an objective criteria.</p> <p>23 BY MS. WYER:</p> <p>24 Q. What are the subjective differences that you 25 would identify?</p>	<p>Page 40</p> <p>1 from mainstream pornography; although, there are 2 overlaps. But I think primary intent is significant, 3 and that's what my primary intent is.</p> <p>4 Nobody at -- out of all the shows that I've 5 had, of all the books I've published, nobody has ever 6 said, "I think your work is pornographic." So somebody 7 sees a difference, and each person's subjective criteria 8 would be different. That's the way it is with 9 subjective criteria.</p> <p>10 Q. But there's no way to define the 11 visual distinct -- you can't define anything about the 12 appearance of a photograph that clearly reflects the 13 intent of the photographer?</p> <p>14 MS. BAUMGARDNER: Objection.</p> <p>15 THE WITNESS: No, I don't think you can at all, 16 and therein is the problem. I've seen work by 17 photographers who I know their intent is being totally 18 misunderstood. Artists have always been misunderstood, 19 and one of the things as an artist is, you subject 20 yourself to the possibility of being misunderstood. The 21 problem with 2257 is not only do you subject yourself to 22 the possibility of being misunderstood, you subject 23 yourself to the possibility of going to jail.</p> <p>24 BY MS. WYER:</p> <p>25 Q. Let me go back and talk about the works that</p>

<p style="text-align: right;">Page 57</p> <p>1 work with the technical advisor, and he would accomplish 2 that. But the decision about what to post would be 3 mine.</p> <p>4 Q. So in the past when you were -- when material 5 was being posted, did you provide the content that you 6 wanted to be posted?</p> <p>7 A. Yes.</p> <p>8 Q. Did you control the layout of how it appeared?</p> <p>9 A. A.D. Colman, who hosts the website, and the web 10 designer he was working with, put the design together 11 and got my approval for it.</p> <p>12 MS. WYER: We'll mark this as Exhibit 4. (Whereupon, Defendant's Exhibit No. 4 was 13 marked for identification.)</p> <p>14 BY MS. WYER:</p> <p>15 Q. You've just been handed what's been marked as 16 Steinberg 4. Is this your introduction to the section 17 of the Nearby Cafe website that is your section?</p> <p>18 A. It looks like it.</p> <p>19 Q. The last time that you updated anything here 20 was in -- 15 years ago?</p> <p>21 A. This says -- well, this says copyright 2005, so 22 maybe it was eight years ago. Yeah, I guess -- I don't 23 remember, but I'm looking at this, and this says "2005," 24 so that's possible. When the website -- when this part</p>	<p style="text-align: right;">Page 59</p> <p>1 BY MS. WYER:</p> <p>2 Q. Did you provide A.D. Colman with copies of all 3 of the 2257 records related to these photographs?</p> <p>4 A. Yes.</p> <p>5 Q. So he has complete copies of those?</p> <p>6 A. Yes.</p> <p>7 Q. And the address listed on the 2257 statement 8 would be his address? Or is it your address?</p> <p>9 A. I don't -- I think so. I don't know what 10 address he's using.</p> <p>11 Q. Do you think it's his or yours?</p> <p>12 A. I don't know. It's not mine. I don't know if 13 it's his home, his office, his whatever, but it's 14 different from -- it's not mine.</p> <p>15 Q. Okay. So Exhibit 3, it states that -- and this 16 is kind of -- this was not written by you, correct, or 17 was it?</p> <p>18 A. That's correct.</p> <p>19 Q. It was written --</p> <p>20 A. -- by Allan Colman.</p> <p>21 Q. And it states that, "This portion of the Nearby 22 Cafe website serves as the central web repository for 23 all of David Steinberg's diverse activities."</p> <p>24 Is that accurate at this point?</p> <p>25 A. Yes. It's the -- it's as close to a central</p>
<p style="text-align: right;">Page 58</p> <p>1 of the website was originally set up, it was a huge 2 project, and nothing has changed since then.</p> <p>3 Q. You mean you provided all the initial content 4 and it has never been updated?</p> <p>5 A. That's correct.</p> <p>6 MS. WYER: Okay. We'll mark this as Steinberg 7 5. (Whereupon, Defendant's Exhibit No. 5 was 8 marked for identification.)</p> <p>9 BY MS. WYER:</p> <p>10 Q. The exhibit marked as Steinberg 5, is this the 11 initial portal for the photographic portfolios on the 12 website, on yours?</p> <p>13 A. Yes.</p> <p>14 Q. Do you know where on the website the 2257 15 statement is?</p> <p>16 A. No. I know it's there. I've found it myself 17 by searching the website for 2257, and it took me there.</p> <p>18 Q. Okay. Because I've not been able to find it.</p> <p>19 MS. BAUMGARDNER: I think he supplied 20 directions in an answer to an interrogatory or requests 21 for production.</p> <p>22 THE WITNESS: It's there. I've seen it. I 23 just don't remember specifically where on the site it 24 is.</p>	<p style="text-align: right;">Page 60</p> <p>1 repository as I have.</p> <p>2 Q. Why was this website set up?</p> <p>3 MS. BAUMGARDNER: Objection.</p> <p>4 THE WITNESS: Why did Allan Colman set up the 5 website?</p> <p>6 BY MS. WYER:</p> <p>7 Q. Was he the one that initiated the project of 8 setting this up?</p> <p>9 A. Yes.</p> <p>10 Q. Do you know why he did that?</p> <p>11 A. No. I really -- I could guess, but I don't 12 know. He asked me to be part of it, and I agreed.</p> <p>13 Q. So this was not a commercial effort on your 14 part?</p> <p>15 A. Well, it had commercial interest to me because 16 it was a way to make my work known. The original plan 17 was that books of mine could be purchased through the 18 website, although that actually never got set up. So 19 there was some commercial interest for me in terms of 20 promoting my work.</p> <p>21 But, as is the case, my interest in my work is 22 somewhat commercial, but that's not the main purpose of 23 my work, to make money from it. My main purpose is to 24 make a statement about human sexuality, and, of course, 25 I would like to make some money from it. Generally, I</p>

<p style="text-align: right;">Page 65</p> <p>1 what does that reflect? In your view, when you say 2 "advertisements contain a certain kind of image," what 3 does that reflect?</p> <p>4 MS. BAUMGARDNER: Objection.</p> <p>5 THE WITNESS: I think advertisements both 6 establish and reinforce stereotypical notions of who is 7 attractive or sexually desirable. The components of 8 that -- those aesthetic judgments are complex and 9 involve age, how symmetrical a face is, how symmetrical 10 a body is, whether a person has smooth skin or not 11 smooth skin, frizzy hair or silky hair, and so on. The 12 components of what is beautiful has been subject to many 13 studies. I'm not an expert in those.</p> <p>14 BY MS. WYER:</p> <p>15 Q. But you use something as a benchmark against 16 which you are trying to put yourself -- your work as a 17 contrast or as a counterpoint?</p> <p>18 MS. BAUMGARDNER: Objection. I think that 19 mischaracterizes what Mr. Steinberg has testified to.</p> <p>20 THE WITNESS: I photograph a wide variety of 21 couples. I'm especially happy when couples who do not 22 reinforce societal stereotypes of who is beautiful or 23 sexually attractive and want to be photographed by me. 24 And I emphasize those works when I have art shows, and I 25 will emphasize those works in the books that I'm working</p>	<p style="text-align: right;">Page 67</p> <p>1 MS. BAUMGARDNER: Objection.</p> <p>2 THE WITNESS: Many factors would go into it.</p> <p>3 It can be complicated to decide. I'm very bad at 4 estimating people's ages in general. No, I don't think 5 that you can, you know, make hard and fast rules about 6 how you could visually determine somebody's age, and I 7 certainly don't try to do that myself.</p> <p>8 But if I'm photographing somebody who's 72 9 years old, which I have done, it is odd to be -- have to 10 prove that they're not 18, compared, for example, to 11 when somebody buys cigarettes or somebody buys alcohol. 12 Nobody cards me when I walk into a liquor store and 13 says, "Prove to me that you're 21 years old."</p> <p>14 BY MS. WYER:</p> <p>15 Q. Is there a correlation, in your view, between 16 how old a person looks and whether the person is 17 perceived as beautiful or glamorous, which are terms 18 that you used in your response to Interrogatory 7?</p> <p>19 A. It varies. I think there are very few 20 75-year-old people who are considered glamorous.</p> <p>21 Q. Do you think a person who is seen as beautiful 22 or glamorous may be perceived as younger than they 23 actually are?</p> <p>24 A. Yes.</p> <p>25 Q. Do you think a person who is not seen as</p>
<p style="text-align: right;">Page 66</p> <p>1 on. So I tend to emphasize people who are older, you 2 know, older than what you say.</p> <p>3 But somebody who's 50 compared to somebody 4 who's 25 is going to be more likely to show up in my 5 book; somebody who's heavier compared to somebody who's 6 thinner; somebody who's not Caucasian compared to 7 somebody who is Caucasian; somebody who has a disability 8 compared to somebody who does not have a disability. I 9 want to emphasize works that counter the stereotypes 10 that I see in society of who is beautiful and sexually 11 desirable.</p> <p>12 BY MS. WYER:</p> <p>13 Q. Going back to your response to Interrogatory 7 14 and your use of the terms "clearly and obviously adults 15 and mature couples," do you contend that it is possible 16 to determine a person's age based on their visual 17 appearance?</p> <p>18 A. Sometimes.</p> <p>19 Q. Within what degree of accuracy?</p> <p>20 A. Lorraine is not under 18; I would bet with 99.9 21 percent accuracy on that. You are not under 18, I would 22 bet that with 80 percent accuracy. I think it varies 23 from person to person. Obviously, I am not under 18.</p> <p>24 Q. Does it depend on the person's age how 25 accurately you can tell their age?</p>	<p style="text-align: right;">Page 68</p> <p>1 beautiful or glamorous may appear older than they 2 actually are?</p> <p>3 A. Possibly. I think anybody -- some people look 4 older than they are; some people look younger than they 5 are. Whether being glamorous makes you look younger or 6 older, well, you can ask the people over at Estee Lauder 7 about that.</p> <p>8 Q. Is there a correlation between whether a person 9 has a physical disability and how old the person looks?</p> <p>10 A. Personally, I would say probably not.</p> <p>11 Q. In your response to Interrogatory 9, which the 12 question starts on page 5 and your response is on page 13 6 --</p> <p>14 A. Oh, okay. Yes.</p> <p>15 Q. Do you recall preparing this response?</p> <p>16 A. Yes.</p> <p>17 Q. This asks for a breakdown of the ages of 18 individuals appearing in your work, correct?</p> <p>19 A. Yes.</p> <p>20 Q. How did you determine the breakdown that's 21 provided here?</p> <p>22 A. My wonderful spreadsheet.</p> <p>23 Q. So you used your spreadsheet that you created 24 for purposes of complying with 2257 in order to provide 25 this information?</p>

<p style="text-align: right;">Page 69</p> <p>1 A. Yes.</p> <p>2 Q. Does the sum of all of these categories</p> <p>3 represent the total number of individuals that you</p> <p>4 photographed in works that you -- that you considered</p> <p>5 depictions of sexually explicit conduct as of the date</p> <p>6 you provided the response?</p> <p>7 A. This represents all the people that I</p> <p>8 photographed. When I take a photograph of a couple</p> <p>9 being sexual, it's quite possible that half of those</p> <p>10 photographs are not sexually explicit at all. So this</p> <p>11 is not broken down according to which photographs are</p> <p>12 sexually explicit or not. I wouldn't know how to do</p> <p>13 that. This is a breakdown of all the people I have</p> <p>14 photographed. I believe this wasn't just my couples</p> <p>15 photography.</p> <p>16 Q. Okay. So this is --</p> <p>17 A. But it might include the transsexual pictures,</p> <p>18 but I don't remember whether I included those or not.</p> <p>19 Q. Do you have 2257 records for the transsexual</p> <p>20 pictures?</p> <p>21 A. Oh, no, I don't. So you're right, I probably</p> <p>22 did not. So this must be the people involved in the</p> <p>23 couples photography.</p> <p>24 Q. All of the couples photography involved</p> <p>25 photography of couples having sex?</p>	<p style="text-align: right;">Page 71</p> <p>1 A. Yes.</p> <p>2 Q. -- up to that time?</p> <p>3 A. Yes.</p> <p>4 Q. So the first two categories are 19 to 20, which</p> <p>5 you identified four, and 21 to 25 you identified 52. So</p> <p>6 that means that 56 individuals out of the 395 were 25 or</p> <p>7 younger at the time you took their photographs?</p> <p>8 A. Right.</p> <p>9 Q. Correct?</p> <p>10 A. Right, about 15 percent.</p> <p>11 Q. And 97, if you add up the first three, which</p> <p>12 includes 26 to 30, 97 of the individuals were 30 or</p> <p>13 younger, correct?</p> <p>14 A. Okay.</p> <p>15 Q. So you do not rule out taking photographs of</p> <p>16 younger individuals?</p> <p>17 A. No.</p> <p>18 Q. Have you ever refused to photograph someone</p> <p>19 because he or she was too young?</p> <p>20 A. No, I have not had that problem.</p> <p>21 Q. If an 18-year-old couple asks you to photograph</p> <p>22 them having sex, would you do so?</p> <p>23 A. Probably.</p> <p>24 Q. And you indicated, at the bottom line of your</p> <p>25 response, that you have more than 1,000 images in each</p>
<p style="text-align: right;">Page 70</p> <p>1 A. Yes.</p> <p>2 Q. So at least some of the photographs in a shoot</p> <p>3 would show those individuals having sex?</p> <p>4 A. Yes, I think that's right. Of these models</p> <p>5 we're talking about here, I have sexually explicit</p> <p>6 photos -- at least one sexually explicit photo of all of</p> <p>7 them. I think that's right.</p> <p>8 Q. And this is accurate as of the date you</p> <p>9 provided the response?</p> <p>10 A. Yes.</p> <p>11 Q. So that's October -- you probably provided it</p> <p>12 sometime before we got it, so approximately</p> <p>13 October 2012?</p> <p>14 A. That sounds right.</p> <p>15 Q. And the total here -- if you add up all of</p> <p>16 these numbers: 4 plus 52 plus 41 plus 41 plus 87 plus</p> <p>17 60 plus 37 plus 27 plus 42 plus 4 is 395?</p> <p>18 A. If you say so.</p> <p>19 MS. BAUMGARDNER: You're the mathematician. We</p> <p>20 should make you add it up.</p> <p>21 THE WITNESS: I'm good but I'm not that fast.</p> <p>22 BY MS. WYER:</p> <p>23 Q. Does that -- would that represent all of the</p> <p>24 individuals you photographed in the adult couple having</p> <p>25 sex photographs --</p>	<p style="text-align: right;">Page 72</p> <p>1 age group. And that's because when you have a session</p> <p>2 with a couple, you take a lot of photographs of that</p> <p>3 couple, correct?</p> <p>4 A. Yes.</p> <p>5 Q. Do you keep separate 2257 records for every</p> <p>6 image?</p> <p>7 A. That would be -- talking about burdensome. No,</p> <p>8 I do not. No, I have one -- the age of the couple does</p> <p>9 not change during a shoot significantly. Actually, it</p> <p>10 does not change at all.</p> <p>11 Q. So you just keep the records according to the</p> <p>12 shoot?</p> <p>13 A. Yes.</p> <p>14 MS. WYER: We'll mark this as Steinberg 7.</p> <p>15 (Whereupon, Defendant's Exhibit No. 7 was</p> <p>16 marked for identification.)</p> <p>17 BY MS. WYER:</p> <p>18 Q. Exhibit Steinberg 7, is that a photograph from</p> <p>19 your -- from the Nearby Cafe, your part of the website?</p> <p>20 A. Yes.</p> <p>21 Q. Is that a photograph that you took?</p> <p>22 A. Yes.</p> <p>23 Q. Can you tell how old the individuals in the</p> <p>24 central photograph were?</p> <p>25 A. By looking at the photograph?</p>

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1 documentation that the model has given you permission to
2 use the photograph that's taken?

3 A. Yes.

4 Q. Would you -- do you use model releases for
5 every photograph that you take?

6 A. No, but sometimes every photograph that I'm
7 taking with a purpose of showing or publishing, or
8 selling.

9 Q. How often do you take photographs that don't
10 have one of those purposes?

11 A. Often. I take a lot of photography at Divas,
12 the transsexual club, mostly just as a favor to the
13 people I'm photographing. But in terms of the sexual
14 photography that we've been talking about, I always
15 intend to use them and I always get releases.

16 Q. Is there any aspect of the process of signing a
17 model release that has to do with age verification?

18 A. No.

19 Q. Are there any practices of your profession as a
20 photographer that relate to the ages of subjects in
21 sexually explicit photographs other than the 2257
22 requirements?

23 A. Wait. I didn't hear what you said. Are there
24 any what?

25 Q. Are there any practices of your profession, as

1 of explicit -- I mean, I presume that anybody who wants
2 to show my work knows that it's illegal to take pictures
3 of people under age and wouldn't do that or want to do
4 that. But it's understood. It's not something
5 talked about. Nobody is going to say, "Listen, you have
6 to make sure your models are 18."

7 Q. Are you familiar with the American Society of
8 Media Photographers?

9 A. Only that they're plaintiffs in the suit.

10 Q. Had you heard of them before?

11 A. No.

12 Q. So you're not a member of that organization?

13 A. No.

14 Q. Do you have any understanding of what that
15 organization does?

16 A. No.

17 Q. Do you know any members of that organization?

18 A. Not that I know of. I may, but I don't know
19 that for a fact.

20 Q. Are you familiar with the Free Speech
21 Coalition?

22 A. Yes.

23 Q. Were you familiar with that organization before
24 this -- before hearing about this lawsuit?

25 A. Yes.

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1 a -- of the profession of photography that relate to age
2 verification of individuals appearing in sexually
3 explicit images?

4 MS. BAUMGARDNER: Objection.

5 THE WITNESS: I don't understand. I mean, my
6 profession is I'm a photographer, and there are other
7 photographers. Are there standard practices among
8 photographers about that?

9 Q. Yes.

10 A. Not that I know of.

11 Q. In order to be a professional photographer, do
12 you have to have a license?

13 A. No.

14 Q. So you're not governed by any conditions of
15 licensing in your use of models?

16 A. That's correct.

17 Q. Are you a party to any contract that imposes
18 obligations on you with respect to the ages of models in
19 your work?

20 A. In taking the photographs, no. If I wanted to
21 submit photos somewhere or whoever I'm submitting photos
22 to could have their own criteria, but that's a different
23 story.

24 Q. Has that occurred?

25 A. Related to the age of the models, no. In terms

1 Q. How are you aware of that organization?

2 A. Kat Sunlove, who was an earlier publisher of
3 Spectator Magazine, was active in the Free Speech
4 Coalition. I knew about it through her.

5 Q. Are you a member of the Free Speech Coalition?

6 A. No.

7 Q. Have you been a member in the past?

8 A. I don't think so.

9 Q. Do you know any other members other than --

10 A. Kat Sunlove, K-A-T S-U-N-L-O-V-E, probably. I
11 think a lot of the people at Spectator Magazine were
12 involved with Free Speech Coalition, but I don't
13 specifically know who was a member.

14 Q. What is your understanding of the purpose of
15 the Free Speech Coalition?

16 A. To advocate against unreasonable constraints
17 against free speech related to adult sexual material.

18 Q. How did you become a plaintiff in this case?

19 A. I believe that Lorraine called me and told me
20 about the suit and asked if I wanted to become a
21 plaintiff.

22 Q. Did you know Lorraine before that time?

23 A. No.

24 Q. I think you mentioned one other organization
25 that you were a member of, but I can't remember.

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1 **you could identify the ages of each of those, the
2 persons depicted in those. Do you remember that?**

3 A. Yes.

4 **Q. And you were unable to identify their exact
5 ages; is that correct?**

6 A. Yes.

7 **Q. Okay. You are able to identify one important
8 fact about each of those models depicted, however,
9 aren't you --**

10 **MS. WYER:** Objection; leading.

11 **BY MS. BAUMGARDNER:**

12 **Q. -- that they are all adults over the age of 18
13 years of age?**

14 **MS. WYER:** Objection; leading.

15 **THE WITNESS:** I can identify it because I have
16 their records on file, and they're my models. I think I
17 said at the time I could. If you asked me for their
18 age, I could look up their ages and confirm their ages.
19 But that's different from being able to visually
20 determine their age from looking at a photo.

21 **BY MS. BAUMGARDNER:**

22 **Q. Correct. But you are certain that all of the
23 people depicted are adults?**

24 A. Yes.

25 **MS. WYER:** Objection; leading.

1 child pornography. Two, about -- for example, if a
2 photographer signs a model release and they're not 18,
3 then you can't enforce the model release. So there's
4 a -- you know, there are many reasons for a photographer
5 to identify -- to determine and verify the age of their
6 models.

7 I would -- if somebody wanted me to take sexual
8 pictures of them, I would not want to do anything
9 before -- if I had any doubt whatsoever before
10 determining their age, just because I wouldn't want to
11 take a picture of an underage person. I certainly
12 wouldn't want to subject myself to potential prosecution
13 for that.

14 **Q. Okay.**

15 A. The people doing fine art sexual photography
16 are a responsible group of people. We -- I mean, in any
17 group of people, I guess there might be somebody that's
18 weird. But, you know, I've represented over 200
19 photographers to Cupido Magazine, and this started with
20 people that I knew but also includes now people that
21 e-mail me out of the blue. I have no idea who they are,
22 and I've never had any reason to question the integrity
23 of any of them.

24 So I don't think 2257 is required in order to
25 be sure that photographers take care -- to think about

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1 **THE WITNESS:** These are my models. I don't
2 photograph people under 18.

3 **BY MS. BAUMGARDNER:**

4 **Q. And that's because there is a very important
5 law in the United States against that; isn't that true?**

6 **MS. WYER:** Objection; leading.

7 **THE WITNESS:** Yeah, they're all the anti-child
8 pornography laws that make it illegal to photograph
9 people under 18 in sexual illicit ways.

10 **BY MS. BAUMGARDNER:**

11 **Q. And so as a matter of practice, you would
12 require IDs of anyone if there was any question in your
13 mind -- maybe even if there weren't a question in your
14 mind -- that they would produce proof of their age in
15 order for you to photograph them; isn't that true?**

16 **MS. WYER:** Objection; leading.

17 **THE WITNESS:** I think that any responsible
18 photographer would want to check the age of their models
19 and make a record of that to protect them if there was
20 ever any question in the sort of system that I was
21 purposing as a more reasonable system for dealing with
22 sexual photography of underaged people.

23 That comes off of an understanding that any
24 photographer in his right mind would protect himself or
25 herself against potential legal problems. One, about

1 the ages of the people that they're photographing. I
2 just think, you know, unless somebody was really into
3 producing child pornography for the purpose of producing
4 child pornography, which is a whole 'nother group of
5 people, nobody is going to take photographs of people
6 unless they're damn sure that they know the ages of the
7 people that are -- you know, the majority of -- meaning
8 over 18 of their models.

9 **MS. BAUMGARDNER:** Thank you.

10 **MS. WYER:** I have some follow-up questions.

FURTHER EXAMINATION

11 **BY MS. WYER:**

12 **Q. How do you know whether someone is a fine art
13 sexual photographer?**

14 A. Well, you don't. I know, because those are the
15 people who -- that's who contacts me because they know
16 that that's what I'm interested in. I'm just saying,
17 of all the people -- maybe I shouldn't classify
18 everybody that -- of all of the photographers who have
19 contacted me in the -- what is it, 25 years now that
20 I've been brokering, you know, being the Cupido's rep in
21 the U.S., I've never dealt with anybody that I have any
22 reason to believe was not a person of integrity, in
23 terms of what they were doing with their photography and
24 who they were photographing.

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1 I don't know everybody personally. I can't
 2 100 percent vouch for everybody. I'm just saying that I
 3 would -- I just think that anybody who is photographing
 4 anybody whose age could possibly be questioned would
 5 have to be really stupid to not say, "Hey, let me see
 6 your ID before I take your picture." And if they were
 7 smart, they would then make a record of it.

8 **Q. And 2257 requires age verification and keeping
 9 records, correct?**

10 A. Yes. The problem with 2257 is it requires so
 11 much more above and beyond what would be reasonable to
 12 ensure that people under 18 were not being exploited for
 13 sexual photography. That's the problem with 2257, not
 14 what its intent is but the lengths to which it goes,
 15 allegedly in that interest, so much so that it makes you
 16 question what the real intent of what 2257 is.

17 **Q. Does the age verification requirement make you
 18 question the intent --**

19 **MS. BAUMGARDNER:** Objection.

20 **BY MS. WYER:**

21 **Q. -- the requirement to check photo IDs by
 22 itself?**

23 **MS. BAUMGARDNER:** Objection.

24 **THE WITNESS:** Well, it makes me question either
 25 the intent or the sanity of the people who wrote the

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1 You don't have to set up a whole structure that
 2 says, "You must have these records. You must keep them
 3 in such and such a way in order to make it in the
 4 self-interest of photographers to be careful about who
 5 they're photographing in terms of their age." All you
 6 have to do is say, "Look, if anybody questions this and
 7 you can't prove that this person is under 18, you're
 8 going to be in deep trouble."

9 That seems to be perfectly adequate to result
 10 in a situation where photographers will, in fact, make
 11 sure that the people they are photographing are over 18.

12 **MS. WYER:** I have no more questions.

13 Thank you for appearing here today.

14 **THE WITNESS:** You're welcome.

15 (At 1:23 P.M., the deposition proceedings
 16 concluded.)

17

18

19

20 STEVEN DAVID STEINBERG

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1 law. I mean, there are so many obviously better ways to
 2 do this. That, combined with the prior existence of
 3 adequate legal means to prosecute people who are
 4 producing child pornography is beyond me. I mean, I can
 5 understand somebody coming up with 2257 to get
 6 reelected. I can't really understand somebody coming up
 7 with this in order to protect children.

8 **BY MS. WYER:**

9 **Q. So what is the intent that you are talking
 10 about?**

11 A. I think that this is an issue. It's a highly
 12 charged issue that is being exploited by politicians for
 13 their own purposes.

14 **Q. And the alternative that you suggested was that
 15 records should not be required until after the image was
 16 made?**

17 **MS. BAUMGARDNER:** Objection.

18 **THE WITNESS:** I think that -- if I was
 19 designing the system, it would not be that the
 20 government requires photographers to do this, rather
 21 that photographers would understand that they may have
 22 to come up with these records, which would make it the
 23 obvious thing to do, for photographers to obtain -- you
 24 know, to check the IDs and get copies, verification, in
 25 case they were ever questioned.

F(415) 597-5600*F*

1 STATE OF CALIFORNIA)

2) Ss.

3 COUNTY OF SAN FRANCISCO)

4

5 I hereby certify that the witness in the
 6 foregoing deposition, STEVEN DAVID STEINBERG, was by me
 7 duly sworn to testify to the truth, the whole truth, and
 8 nothing but the truth, in the within-entitled cause;
 9 that said deposition was taken at the time and place
 10 herein named; that the deposition is a true record of
 11 the witness's testimony as reported by me, a duly
 12 certified shorthand reporter and a disinterested person,
 13 and was thereafter transcribed into typewriting by
 14 computer.

15 I further certify that I am not interested in
 16 the outcome of the said action, nor connected with, nor
 17 related to any of the parties in said action, nor to
 18 their respective counsel.

19 IN WITNESS WHEREOF, I have hereunto set my hand
 20 this 1st day of May, 2013.

21
 22
 23
 24 DAWN E. HOWARD, CSR NO. 13201
 25 STATE OF CALIFORNIA

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CASE NO. 2:09-4607
Judge Michael M. Bayson

FREE SPEECH COALITION, IND.,;
AMERICAN SOCIETY OF MEDIA PHOTOGRAPHERS, INC.,;
MICHAEL BARONE;
DAVID CONNERS a.k.a. DAVE CUMMINGS;
THOMAS HYMES;
TOWNSEND ENTERPRISES, INC., d.b.a.
SINCLAIR INSTITUTE;
C 1 R DISTRIBUTION, LLC. d.b.a CHANNEL 1 RELEASING;
BARBARA ALPER; CAROL QUEEN; BARBARA NITKE;
DAVID STEINBERG; MARIE L. LEVIN a.k.a NINA HARTLEY;
DAVE LEVINGTSON; BETTY DODSON; and CARLIN ROSS,

Plaintiffs,

v.

THE HONORABLE ERIC H. HOLDER, JR.,
in his official capacity as Attorney General of the United States,

Defendant.

Deposition
of
LINDA DIAN WILSON

In Raleigh, North Carolina
Wednesday, April 3, 2013
8:59 a.m. - 4:17 p.m.

Reported by:
Margaret M. Powell, CVR-M
919.779.0322

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(Continued.)

Margaret M. Powell, CVR - (919) 779-0322

STIPULATIONS

IT IS HEREBY STIPULATED AND AGREED BETWEEN
 THE PARTIES TO THIS ACTION THROUGH THEIR RESPECTIVE
 COUNSEL OF RECORD:

1. ON MOTION OF COUNSEL FOR THE DEFENDANT,
 THE ORAL DEPOSITION OF LINDA DIAN WILSON MAY BE TAKEN
 BEGINNING AT OR AROUND 9:00 A.M. ON April 3, 2013, AT
 THE OFFICES OF THE UNITED STATES ATTORNEY IN RALEIGH,
 NORTH CAROLINA, BEFORE MARGARET M. POWELL, CERTIFIED
 VERBATIM REPORTER AND NOTARY PUBLIC;
2. FORMAL OPENING AND CLOSING OF THE
 DEPOSITION BY THE COURT REPORTER IS WAIVED;
3. THE FEDERAL RULES OF CIVIL PROCEDURE
 SHALL CONTROL THE TAKING OF SAID DEPOSITION AND THE USE
 THEREOF IN COURT;
4. OBJECTIONS TO QUESTIONS AND MOTIONS TO
 STRIKE ANSWERS NEED NOT BE MADE DURING THE TAKING OF
 THIS DEPOSITION, BUT MAY BE MADE FOR THE FIRST TIME
 DURING THE PROGRESS OF THE TRIAL OF THIS CASE, OR AT
 ANY PRETRIAL HEARING HELD BEFORE ANY FEDERAL COURT
 JUDGE FOR THE PURPOSE OF RULING THEREON, OR AT ANY
 OTHER HEARING OF SAID CASE AT WHICH SAID DEPOSITION
 MIGHT BE USED, EXCEPT THAT AN OBJECTION AS TO THE FORM
 OF A QUESTION MUST BE MADE AT THE TIME SUCH QUESTION IS
 ASKED OR OBJECTION IS WAIVED AS TO THE FORM OF THE

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QUESTION.

5. THAT THE SIGNATURE OF THE WITNESS TO THE
TRANSCRIPT OF HIS TESTIMONY IS HEREBY WAIVED.
6. EXCEPT AS WAIVED BY THESE STIPULATIONS,
THE PROVISIONS OF THE FEDERAL RULES OF CIVIL PROCEDURE
SHALL APPLY TO THE TAKING OF SAID DEPOSITION AND AS TO
ITS SUBMISSION TO THE RESPECTIVE DEponent,
CERTIFICATION AND FILING WITH THE APPROPRIATE NOTICING
ATTORNEY.

Margaret M. Powell, CVR - (919) 779-0322

1 doesn't instruct you not to answer, you can answer the
2 question despite the objection.

3 We are recording this deposition.
4 There's going to be a transcript at the end, so you
5 need to answer verbally instead of nodding ---
6 A. Okay.
7 Q. --- during the deposition.
8 A. Okay.
9 Q. Do you suffer any condition that would
10 impair -- that impairs you to understand my questions
11 today?

12 A. No, sir.
13 Q. Okay. Do you suffer any condition that
14 would impair you to remember events that happened in
15 the past?
16 A. No, sir.
17 Q. Any medication impairing your ability to
18 understand my questions?
19 A. Certainly nothing that would impair my
20 ability.

21 MS. BAUMGARDNER: If I just might
22 add, Ms. Wilson, could you keep your voice up a little
23 bit. You're soft-spoken ---

24 THE WITNESS: Oh, I'm sorry.
25 MS. BAUMGARDNER: --- and, also,

1 (Whereupon,
2 LINDA DIAN WILSON,
3 having been first duly sworn,
4 was examined and testified
5 as follows:)

6 DIRECT EXAMINATION by MR. BLADUELL:

7 Q. Good morning, Ms. Wilson, my name is
8 Hector Bladuell, I'm an attorney with the U.S.
9 Department of Justice; I represent the government in
10 this case.

11 Have you been deposed before?

12 A. No.

13 Q. Okay. Well, the purpose of this
14 deposition is for me to ask you questions about your
15 claim so that we can understand it better, learn more
16 about it. It's not a matter of discussing the merits
17 of your claim, there's going to be a trial for that.

18 So I'm just going to ask you a series of
19 questions. You let me know the answer if you know it.
20 If you don't know it, you let me know. If you don't
21 understand something I say, please let me know and I'll
22 try to rephrase it.

23 Your counsel will make some objections
24 during -- to some of my questions. Those objections
25 are for -- to preserve them for trial. But if she

1 Ms. Powell needs to be able to hear what you say
2 clearly.

3 THE WITNESS: Ah.
4 MS. BAUMGARDNER: We'll try to
5 remind you if you are a little too soft.
6 THE WITNESS: You're speaking our
7 words, okay.

8 Q. Okay. Now, do you understand that you
9 have taken an oath to tell the truth today?

10 A. Yes, sir.

11 Q. Okay. Do you have any other -- any
12 questions before we begin the deposition?

13 A. No.

14 Q. Okay. Well, could you please state your
15 full name for the record?

16 A. Linda Dian Wilson.

17 Q. And what is your association with the
18 Sinclair Institute?

19 A. I'm the office manager.

20 Q. And as office manager, what are your
21 duties?

22 A. I take care of the vendors that are
23 involved in maintaining our property. I take care of
24 the needs of the individuals in the office as support
25 for what they need every day to do their job. And I am

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<p>1 employment after you graduated from college?</p> <p>2 A. I worked in a frame shop framing art,</p> <p>3 taking orders. I worked for a printer in Richmond,</p> <p>4 Virginia, and I was his office manager and I kept his</p> <p>5 books. And that's -- and after that, I worked for a</p> <p>6 small media company that produced dog-training videos,</p> <p>7 and I performed all of the duties to acquire them, make</p> <p>8 sure they were shipped out, and keeping the financial</p> <p>9 records. I'm not a CPA, so we had a CPA, but I did</p> <p>10 everything else, except the marketing, for that</p> <p>11 company. And I've been with Sinclair as an office</p> <p>12 manager for seven years.</p> <p>13 Q. So you've been with Sinclair since 2006;</p> <p>14 is that about right?</p> <p>15 A. 2005.</p> <p>16 Q. 2005?</p> <p>17 A. Yes, we are going on the eighth year</p> <p>18 now.</p> <p>19 Q. Okay. When you started at Sinclair,</p> <p>20 what were your duties?</p> <p>21 A. I was the office manager in a building</p> <p>22 that we did not own, so my duties were to look after</p> <p>23 the general needs of the people that worked in the</p> <p>24 office every day to make sure that they had everything</p> <p>25 they needed to do their job; get in touch with building</p>	<p>1 Millstone Drive.</p> <p>2 Q. Do you know the address?</p> <p>3 A. 402 Millstone Drive, Hillsborough 27278.</p> <p>4 Q. So were you there when -- were you at</p> <p>5 Sinclair when they moved to the new building?</p> <p>6 A. Yes, I moved us.</p> <p>7 Q. Okay. So what year was that?</p> <p>8 A. I started in August 31, 2005, and we</p> <p>9 moved in January of 2006.</p> <p>10 Q. Okay. How many people work at Sinclair?</p> <p>11 A. It does vary. There are, I believe, 18</p> <p>12 people that are Sinclair employees in our building</p> <p>13 right now.</p> <p>14 Q. Do you have people other than Sinclair</p> <p>15 people working there?</p> <p>16 A. One of the flanker companies maintains</p> <p>17 offices there and I believe there are six people</p> <p>18 working for that company.</p> <p>19 Q. What is the flanker company?</p> <p>20 A. Our business is a sister business of</p> <p>21 PHE, which is Phil Harvey Enterprises, and we have</p> <p>22 different brands and, you know, sell to different</p> <p>23 markets. And this other company is a home-party</p> <p>24 business and they maintain their offices. They rent --</p> <p>25 they basically pay us to have their offices in our</p>
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<p>1 management if there was a problem in our office; take</p> <p>2 care of some financial reporting, basically just</p> <p>3 compiling information from reports in a form that was,</p> <p>4 you know, on one or two pages instead of pages and</p> <p>5 pages of print.</p> <p>6 I prepared for parties and for lunches</p> <p>7 for people that came from out of town.</p> <p>8 Q. Okay.</p> <p>9 A. That was in the beginning.</p> <p>10 Q. When you say you were in a building that</p> <p>11 you didn't own, do you know who owned the building?</p> <p>12 A. The name of the building was Vilcom in</p> <p>13 Chapel Hill. And since we purchased our own building</p> <p>14 within a year of my working there, so my duties</p> <p>15 changed.</p> <p>16 Q. Was that a building that rented out</p> <p>17 office space ---</p> <p>18 A. That's correct.</p> <p>19 Q. --- to a lot of different people?</p> <p>20 A. That's correct.</p> <p>21 Q. And now you are in a building that</p> <p>22 Sinclair owns?</p> <p>23 A. That's correct.</p> <p>24 Q. Where is this building?</p> <p>25 A. It's in Hillsborough, North Carolina on</p>	<p>1 building.</p> <p>2 Q. Okay. What is Phil Harvey Enterprises?</p> <p>3 A. Phil Harvey is the president of --</p> <p>4 overall, he owns the company. He started the company</p> <p>5 in the early '70s.</p> <p>6 Q. He started Phil Harvey Enterprises?</p> <p>7 A. Correct. And our brand has been around</p> <p>8 now for, you know, Sinclair Institute has been around</p> <p>9 now for 20, 25 years -- 20? Twenty (20) years, I</p> <p>10 think.</p> <p>11 Q. Is there some -- so what does Phil</p> <p>12 Harvey Enterprises do?</p> <p>13 MS. BAUMGARDNER: Objection. Just</p> <p>14 for the record, this -- none of this is in the subject</p> <p>15 matter of the -- in the Notice of Deposition we're</p> <p>16 supposed to cover. So I'll let her answer a few more</p> <p>17 questions, but I think we ought to move on.</p> <p>18 MR. BLADUELL: You can answer.</p> <p>19 A. We -- Phil Harvey Enterprises has</p> <p>20 several companies. Our relationship with them is a</p> <p>21 little different from the other companies, probably in</p> <p>22 a way that I don't fully understand. I'm not in</p> <p>23 business, you know, like an MBA, so I don't really</p> <p>24 understand business structure very well.</p> <p>25 I just know that our relationship is a</p>

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<p>1 little bit different in the way we pay -- Phil Harvey 2 Enterprises consists of a warehouse and an accounting 3 department and a legal department and we -- the 4 marketing is done in our building for our company, and 5 we have an agreement with Phil Harvey Enterprises to 6 take care of our accounting and our order fulfillment, 7 that kind of stuff.</p> <p>8 Q. Who is Phil Harvey?</p> <p>9 A. He started our company. He's a public 10 health graduate from ---</p> <p>11 Q. When you say your company -- I'm sorry, 12 when you say your company, you mean Sinclair?</p> <p>13 A. I believe that Phil is an officer in our 14 company.</p> <p>15 Q. In Sinclair?</p> <p>16 A. That's right. And -- but we have a 17 person -- he's the president of Phil Harvey 18 Enterprises, but we have a president of Sinclair.</p> <p>19 Q. Is Sinclair owned by Phil Harvey 20 Enterprises?</p> <p>21 A. I believe Phil is a shareholder in our 22 company.</p> <p>23 Q. Okay. Are there -- do you know how many 24 other shareholders there are ---</p> <p>25 A. I do not.</p>	<p>1 going to have a running objection and ask that you wrap 2 this line of questioning up because it's not one of the 3 designated topics.</p> <p>4 Q. You can answer.</p> <p>5 A. I don't completely understand the 6 relationship, the full financial relationship, between 7 Phil Harvey Enterprises and Sinclair Institute. I do 8 know that Phil Harvey Enterprises is comprised of 9 different brands and we started our company after 10 recognizing that there -- that we could address an 11 adult sexual health and education market.</p> <p>12 How we are related to PHE financially is 13 not clear to me, but there are some facts that I know.</p> <p>14 Q. Well, other than financially, can you 15 describe the relationship between Phil Harvey 16 Enterprises and Sinclair?</p> <p>17 MS. BAUMGARDNER: Objection.</p> <p>18 Again, that's all in the written discovery.</p> <p>19 MR. BLADUELL: You can answer the 20 question.</p> <p>21 A. I don't feel confident that I can give 22 you a complete and accurate answer. It's out of my 23 realm, it's -- it's so far out of the realm of my work, 24 it's not something that I'm really exposed to.</p> <p>25 Q. You said there were Phil Harvey</p>
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<p>1 Q. --- in your company?</p> <p>2 A. I do not.</p> <p>3 Q. Okay. You said that Phil Harvey 4 Enterprises has different companies, correct?</p> <p>5 A. Uh-huh (yes).</p> <p>6 Q. One of them is -- is that correct? Yes?</p> <p>7 A. That is correct.</p> <p>8 Q. And one of his companies is Sinclair; is 9 that right?</p> <p>10 MS. BAUMGARDNER: Would you repeat 11 that question again?</p> <p>12 Q. One of the companies that Phil Harvey 13 Enterprises owns is Sinclair?</p> <p>14 MS. BAUMGARDNER: Objection.</p> <p>15 A. In part, because he's a shareholder and 16 we pay them to perform certain parts of what it takes 17 for us to run our business. I'm not sure that I 18 completely understand -- wow!</p> <p>19 MR. BLADUELL: I'm sorry. Just 20 for the record, the light just went off. I'm going to 21 stand up and try to -- it's a motion sensor.</p> <p>22 Q. I'm sorry, Ms. Wilson. The question 23 was, does Phil Harvey Enterprise own Sinclair 24 Institute? You can answer.</p> <p>25 MS. BAUMGARDNER: And, again, I'm</p>	<p>1 Enterprises employees in your building, correct?</p> <p>2 A. Yes.</p> <p>3 Q. Who are these employees of Phil Harvey 4 Enterprises in your building?</p> <p>5 A. They work for one of the companies. I 6 think I've heard the term "umbrella" used to describe 7 PHE, and under that umbrella there are several 8 companies and they are called flanker companies. We 9 are called a sister company for some reason that I 10 don't completely understand. The people that are in our 11 building that are in the flanker company work for -- 12 they're -- they're doing business as Temptations 13 Parties, and they're a home-party business.</p> <p>14 Q. What is a home-party business?</p> <p>15 A. It is a business not -- where there are 16 consultants who go into people's homes that have 17 requested the consultant to come and they invite 18 friends and they -- it's an opportunity to do business, 19 but it's in the home as opposed to a store front.</p> <p>20 Q. An opportunity to do -- you said an 21 opportunity to do business at home, but what kind of 22 business?</p> <p>23 A. Oh. It is an adult-novelty business, so 24 we sell potions and lotions and lingerie and adult 25 toys.</p>

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<p>1 Q. When you say "we," do you mean 2 Temptations?</p> <p>3 A. That's correct.</p> <p>4 Q. Okay. So, other than Temptation 5 employees in your building, are there other Phil Harvey 6 Enterprise employees?</p> <p>7 A. We are Sinclair Institute employees. We 8 pay Phil Harvey Enterprises to take care of our 9 payroll, our accounting, our order fulfillment. I 10 believe Phil is a shareholder in our company. We share 11 information back and forth that is useful to both of 12 our companies, but I don't really think that it would 13 be correct to say that Phil Harvey is the sole owner of 14 our company because I know there are other people who 15 own shares in our company.</p> <p>16 Q. Okay. Who are these people?</p> <p>17 MS. BAUMGARDNER: Objection. I'm 18 going to instruct the witness not to answer any more of 19 these questions. They are not -- we are so far afield. 20 They are not designated as topics. In this we produced 21 her answer to questions about it and she is ---</p> <p>22 MR. BLADUELL: Okay. I under ---</p> <p>23 MS. BAUMGARDNER: --- she doesn't 24 -- she isn't qualified to give you answers on these 25 questions.</p>	<p>1 are employees at Sinclair that are shareholders. I 2 could only give you a guess as to who I believe that 3 they are because we do not discuss our financial 4 relation, our individual financial relationships, with 5 our company with each other as employees.</p> <p>6 Q. So this -- the people that -- so do you 7 know their names or you don't know their names?</p> <p>8 MS. BAUMGARDNER: Objection. She 9 said she didn't know who they are.</p> <p>10 A. I believe I -- I believe I just answered 11 that by saying I could only make a guess ---</p> <p>12 Q. Okay.</p> <p>13 A. --- and I don't feel comfortable under 14 oath making guesses about questions.</p> <p>15 Q. I understand that. But, I mean, we're 16 not -- are we talking about a hundred employees or are 17 we talking about five or six?</p> <p>18 A. Our company, I believe, has about 18 19 employees now.</p> <p>20 Q. But the ones that you said are 21 shareholders, so it's a limited number, it's like five 22 or six?</p> <p>23 A. It is -- it is not everyone in our 24 building. That much I know ---</p> <p>25 Q. Okay.</p>
<p>1 MR. BLADUELL: Okay. For the 2 record, counsel has instructed the witness not to 3 answer on relevancy grounds; is that right?</p> <p>4 MS. BAUMGARDNER: No. On the fact 5 that we haven't produced this witness under Rule 30. 6 If you want me to read the rule, Rule 30(b) 5 or 6.</p> <p>7 MR. BLADUELL: Are you ---</p> <p>8 MS. BAUMGARDNER: We produced her, 9 not on relevance ---</p> <p>10 MR. BLADUELL: Counsel -- counsel 11 -- so, okay, so are you instructing the witness not to 12 answer on a privilege ground?</p> <p>13 MS. BAUMGARDNER: No.</p> <p>14 MR. BLADUELL: Then the instruction 15 not to answer is not proper. I represent to you that 16 it's not a privilege; you can answer the question, so I 17 ask you to answer the question, Ms. Wilson.</p> <p>18 THE WITNESS: Could you repeat the 19 exact question you'd like me to answer?</p> <p>20 MR. BLADUELL: Sure. I'm sorry. 21 Can we have the court reporter read it back?</p> <p>22 (Question read back.)</p> <p>23 MS. BAUMGARDNER: You can answer 24 if you know.</p> <p>25 A. I don't know that, but I know that there</p>	<p>1 A. --- because I am not a shareholder.</p> <p>2 Q. Okay. Now, you said that Phil Harvey 3 Enterprises has different companies, correct? One of 4 them is Temptations, which is in your building. What 5 other companies does Phil Harvey own?</p> <p>6 MS. BAUMGARDNER: Objection.</p> <p>7 Q. Phil Harvey Enterprises.</p> <p>8 MS. BAUMGARDNER: Objection.</p> <p>9 A. Do I answer?</p> <p>10 Q. Yeah, you can answer. It's not an 11 instruction.</p> <p>12 MS. BAUMGARDNER: If you know.</p> <p>13 A. Adam & Eve.</p> <p>14 Q. And what do they do?</p> <p>15 A. They are ---</p> <p>16 MS. BAUMGARDNER: Objection. Go 17 ahead and answer.</p> <p>18 A. They are an adult novelty business, like 19 entertainment and novelty. So they sell adult toys, 20 they sell lingerie, they sell films.</p> <p>21 Q. Okay. Are there Adam & Eve employees in 22 your building?</p> <p>23 MS. BAUMGARDNER: Objection.</p> <p>24 A. No.</p> <p>25 Q. Okay. So what -- what -- so Adam & Eve</p>

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<p>1 both companies adhere to. It's very important to us --</p> <p>2 Phil Harvey was a public health person, and that is how</p> <p>3 he got into this business.</p> <p>4 It's very important to us that</p> <p>5 everything that we do meet these standards. So in that</p> <p>6 sense they are similar.</p> <p>7 They are different in that we are</p> <p>8 selling to a different adult market. Our adult market</p> <p>9 is people who may have problems because of their</p> <p>10 health, people who may lack information about healthy</p> <p>11 sexual relationships among adults.</p> <p>12 We have experts in our films that are</p> <p>13 sexual education -- they're educators and researchers,</p> <p>14 therapists, because we -- our market is people who are</p> <p>15 looking for certain advice in a more clinical, I would</p> <p>16 say, way.</p> <p>17 The things -- the titles that Adam & Eve</p> <p>18 produce are more, I would say, adult entertainment</p> <p>19 without that, you know, like they probably would not</p> <p>20 have an expert speaking on camera in their film. In</p> <p>21 this way they are different.</p> <p>22 Q. Okay. When you say, "adult</p> <p>23 entertainment," is that -- is it -- do I understand</p> <p>24 correctly that you're making a distinction between that</p> <p>25 adult entertainment and what Sinclair produces?</p>	<p>1 Q. Oral, oral sex?</p> <p>2 A. Probably.</p> <p>3 Q. And do you have that same content in the</p> <p>4 Sinclair videos?</p> <p>5 A. Yes.</p> <p>6 Q. Have you met Mr. Phil Harvey?</p> <p>7 MS. BAUMGARDNER: Objection.</p> <p>8 A. Yes. Yes.</p> <p>9 Q. When did you meet him?</p> <p>10 A. He -- we have a -- Phil Harvey has</p> <p>11 another interest called DKT International. He spends</p> <p>12 about half of his time, or maybe more, traveling around</p> <p>13 the world helping more impoverished areas learn about</p> <p>14 how to prevent sexually transmitted disease, how to</p> <p>15 prevent unwanted pregnancy because, like I said, he's a</p> <p>16 public health person, that, that's his interest.</p> <p>17 A portion of the profits of all of the</p> <p>18 companies go to support DKT International.</p> <p>19 So he's not in Hillsborough all the</p> <p>20 time, but he does keep office hours and he comes and he</p> <p>21 attends some of our monthly employee meetings, and he</p> <p>22 comes to our Christmas parties, and frequently consults</p> <p>23 with different members of the company who have</p> <p>24 questions that his experience might, you know, be</p> <p>25 needed about the marketing that we do and that kind of</p>
Page 31	Page 33
<p>1 MS. BAUMGARDNER: Objection.</p> <p>2 A. There are some distinctions because we</p> <p>3 specifically have experts who are educators and</p> <p>4 clinicians in our films. It gives our films a</p> <p>5 different look, I think, a different tone because we</p> <p>6 are selling to a different adult market.</p> <p>7 Q. But when you say that the Adam & Eve</p> <p>8 productions are adult entertainment, what do you mean</p> <p>9 by that?</p> <p>10 A. They are films that are produced to</p> <p>11 enhance the mature sexual lives and experiences of</p> <p>12 adults who may not feel like they need to speak -- they</p> <p>13 need to have an expert speaking to them on film. They</p> <p>14 are just people like the people that view the films,</p> <p>15 adults, adults that view the films.</p> <p>16 Q. Would those films -- are those films</p> <p>17 pornography?</p> <p>18 MS. BAUMGARDNER: Objection.</p> <p>19 Q. The films from Adam & Eve?</p> <p>20 A. Could you define pornography?</p> <p>21 Q. Sexual -- sexually explicit images,</p> <p>22 intercourse ---</p> <p>23 A. Yes.</p> <p>24 Q. --- display of genitals?</p> <p>25 A. Yes.</p>	<p>1 thing.</p> <p>2 Q. Is it accurate to say you've seen him</p> <p>3 more than ten times?</p> <p>4 A. Yes.</p> <p>5 Q. And you've talked to him more than ten</p> <p>6 times?</p> <p>7 A. I don't think I've talked to him more</p> <p>8 than ten times.</p> <p>9 Q. Five times?</p> <p>10 A. I've sent him thank you notes for what</p> <p>11 he does and who he is and -- but I don't talk to him</p> <p>12 much.</p> <p>13 Q. Have you had work interactions with Mr.</p> <p>14 Phil Harvey?</p> <p>15 A. No, not really, like we don't work</p> <p>16 together.</p> <p>17 Q. But he comes to the Sinclair building,</p> <p>18 correct?</p> <p>19 A. And speaks with our producer and our</p> <p>20 president.</p> <p>21 Q. Does he have an office in the Sinclair</p> <p>22 building?</p> <p>23 A. No.</p> <p>24 Q. Okay. You say he speaks to your</p> <p>25 producers -- producer; is that right?</p>

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<p style="text-align: right;">Page 34</p> <p>1 A. That's correct. 2 Q. Who is your producer? 3 A. Kathy Brummitt. 4 Q. And what is her job? 5 A. She was the first Sinclair employee; and 6 her job, until recently, was to oversee the production 7 of our proprietary video, the video that we produce. 8 Q. Sexually explicit videos? 9 A. And non-sexually explicit videos. 10 Q. Okay. 11 A. Now she is -- we're in a bit of a 12 transition in our company and we're looking at 13 different ways to achieve what we do, and she is now 14 the head of new customer acquisition. But she probably 15 still maintains the title of head of production. We 16 are not in production right now, so. 17 Q. Okay. About how often do you see that 18 Ms. Kathy -- I'm sorry, what -- what was her last name? 19 A. Brummitt. 20 Q. So how often do you see Kathy Brummitt 21 talk to Phil Harvey? 22 MS. BAUMGARDNER: Objection. 23 A. Maybe three times a year. 24 Q. Okay. And you said that Phil Harvey 25 also comes to Sinclair to talk to other employees; is</p>	<p style="text-align: right;">Page 36</p> <p>1 A. Kathy works with -- do you want me to 2 say their names? 3 Q. Sure. Yes, please. 4 A. Betsey Grondy, who helps with new 5 customer acquisition. Rebecca Cook, who is the head of 6 our wholesale division. She works with Donica McClean 7 -- I'm sorry, she's married now, Donica Reardon, and 8 Brittany Cox. 9 Q. Are these, Brittany Cox and Donica, are 10 also employees of Sinclair? 11 A. Correct, in the wholesale division. 12 Our Senior Buyer is Wayne Johnson. He 13 works on catalog with George Campbell. 14 The person that does our e-mail 15 marketing is Rick Miller. 16 The head of our website is David Allen. 17 We have four graphic artists. Their 18 names are Doris Rudd, Clark Gimenez, Sarah Wilson and 19 Meredith Pratt. 20 Q. Okay. Is that all? Oh, I'm sorry. 21 A. We have Alan Julich, who works in -- he 22 works on our web team helping with the duties of the 23 website. 24 Jesse Sirbaugh also works on our web 25 team.</p>
<p style="text-align: right;">Page 35</p> <p>1 that right? 2 A. He comes to meet with our president. 3 Q. And who is your president? 4 A. Patrick Smith. 5 Q. Okay. So how often does he meet with 6 your president? 7 MS. BAUMGARDNER: Objection. 8 A. I believe he has -- in our building, 9 which would be the meetings that I would know about, I 10 think Phil may have been there three times in the past 11 year and a half to visit with Patrick, maybe a little 12 more. I'm -- I'm uncertain. 13 Q. Okay. So the Sinclair Institute has a 14 president, correct? 15 A. A president? Yes. 16 Q. And this president -- his name is? You 17 just said it's Patrick. 18 A. Patrick Smith. 19 Q. And has a director of production, Ms. 20 Kathy Burmitt? 21 A. Brummitt. 22 Q. Brummitt? 23 A. Uh-huh (yes). 24 Q. Who are the rest of the employees at 25 Sinclair?</p>	<p style="text-align: right;">Page 37</p> <p>1 Maureen Castro is -- she sort of heads 2 up the organization of the duties of the web team. 3 Q. Okay. But for the -- for the leadership 4 of Sinclair, who would you say that is, Patrick? 5 A. Patrick Smith. 6 Q. And who else? 7 MS. BAUMGARDNER: Objection. 8 A. I would say Patrick. 9 Q. Is there a vice president? 10 MS. BAUMGARDNER: Objection. 11 A. I'm not aware of a vice president. 12 Q. Is there --- 13 A. If there is, I just don't know what it 14 is. 15 Q. Okay. Is there a Chief Financial 16 Officer? 17 MS. BAUMGARDNER: Objection. 18 A. No. Our accounting department, I 19 suppose would be. 20 Q. So who's the head of the accounting 21 department? 22 A. Ginger Stallings, but she is not a 23 Sinclair employee. 24 Q. Where does she work? 25 A. She works at PHE.</p>

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<p style="text-align: right;">Page 42</p> <p>1 Q. Okay. Have you worked for any other 2 company under the umbrella of PHE that is not Sinclair? 3 MS. BAUMGARDNER: Objection. 4 A. No. 5 Q. What is Townsend Enterprises? 6 A. That is the legal name of our business. 7 We do business as Sinclair Institute, but Townsend 8 Enterprises is the name on our business license. 9 Q. So Townsend Enterprises and Sinclair are 10 the same thing? 11 A. That is correct. 12 Q. Townsend Enterprises is not a different 13 entity? 14 A. Correct. 15 Q. Okay. So let's say that Sinclair 16 Enterprises is going to do a film, sexually explicit 17 film, could you walk me through your involvement in the 18 production of that film? 19 A. Once the film is complete, I process the 20 paperwork involved that is a part of keeping 2257 21 records. I maintain copies of the IDs of everyone in 22 the film, including the people that are in the building 23 working that are not actually performers in the film. 24 So everyone that is involved in the 25 production, we keep their ID. In other words, this is</p>	<p style="text-align: right;">Page 44</p> <p>1 doubt it. 2 Q. Okay. So, they are filming this 3 movie and how do you get the copies of the IDs? 4 A. They take a picture of the performer 5 holding their ID. 6 Q. And is this picture taken in California? 7 A. Correct. 8 Q. Okay. 9 A. At the date of the, you know, first date 10 of production. 11 Q. Is there someone from Sinclair at this 12 production? 13 A. Yes. 14 Q. And who is that? 15 A. Kathy Brummitt. 16 Q. And does she take -- is she the one 17 taking the pictures of the IDs? 18 A. I don't know who takes the pictures. 19 Q. Okay. So someone takes the pictures of 20 the IDs, then gives this picture to Ms. Burmitt [sic]? 21 A. Brummitt. 22 Q. Brummitt, I'm sorry, Brummitt. Correct? 23 A. To my knowledge, I mean --- 24 Q. Yes, to your -- as far as you know? 25 A. Yes. It's like they sign model</p>
<p style="text-align: right;">Page 43</p> <p>1 all happening, you know, our films are all -- everyone 2 on the crew is an adult, the performers are all adults. 3 Q. Just for clarification, the performers, 4 is -- do the performers film the movie at the 5 offices of Sinclair? 6 A. No. 7 Q. There's a studio where this production 8 happens? 9 A. Takes place in a studio. 10 Q. And where is this studio? 11 A. In California. 12 Q. Okay. So no productions take place in 13 North Carolina? 14 A. Nothing above and beyond maybe a 15 product demo/video that would just show a product in 16 someone's hand or something like that. 17 Q. Okay. Now this studio in California, is 18 it owned by Sinclair? 19 A. No. 20 Q. Who owns this studio? 21 A. I have no idea. 22 Q. Do you -- it is owned by PHE 23 Enterprises? 24 MS. BAUMGARDNER: Objection. 25 A. I have no idea, and I would tend to</p>	<p style="text-align: right;">Page 45</p> <p>1 releases, they have their picture taken with their ID, 2 and all of this happens, you know, that's -- that -- 3 wow! It's almost like it cuts off if we're not moving. 4 MR. BLADUELL: Yeah, it's going to 5 happen. 6 MS. BAUMGARDNER: Yeah, it's a 7 motion detector so that's why you have to get up. 8 MR. BLADUELL: For the record, the 9 light went off again. They're sending us a message. 10 So you can continue. 11 THE WITNESS: I have never been at 12 a Sinclair Institute production. 13 Q. Okay. So Ms. Brummitt collects the IDs 14 and the model releases, and does she send them to you 15 by e-mail? 16 A. No. 17 Q. By mail? 18 A. No. 19 Q. She brings them from California to North 20 Carolina? 21 A. That's correct. 22 Q. Okay. Does -- is Ms. Brummitt -- does 23 Ms. Brummitt do this--taking IDs and model 24 releases--for other companies that are part of the 25 umbrella of Phil Harvey Enterprises?</p>

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<p>1 MS. BAUMGARDNER: Objection.</p> <p>2 A. I really feel like that without a</p> <p>3 calculator and sitting down and writing all this stuff</p> <p>4 down that I couldn't give you an accurate answer.</p> <p>5 Q. Okay. All right.</p> <p>6 A. I am under oath.</p> <p>7 Q. Yes. And nothing bad is going to happen</p> <p>8 if you give us a reasonable estimate based on your</p> <p>9 knowledge of the process.</p> <p>10 So, you know, would you say that that</p> <p>11 process of just the cross-referencing, typing up the</p> <p>12 bar codes would take, in between the time that you</p> <p>13 spent on it and the time that the graphic artists spend</p> <p>14 on it, would you say it would take up to an hour?</p> <p>15 MS. BAUMGARDNER: Objection.</p> <p>16 A. When all is said and done, yeah -- yes.</p> <p>17 Q. And it could take less than an hour?</p> <p>18 A. Well, there are a certain number of</p> <p>19 things that we have to do with everything, so one image</p> <p>20 wouldn't take any less or any more, really, unless our</p> <p>21 equipment isn't operating properly.</p> <p>22 Q. Okay.</p> <p>23 A. You know, we have to sit and wait for</p> <p>24 these circles to go around on this screen while the</p> <p>25 images upload; and once they're uploaded, they get a</p>	<p>1 have discussions with my co-workers, for example.</p> <p>2 Q. You don't recruit the individuals</p> <p>3 appearing in your, in Sinclair, videos, correct?</p> <p>4 A. Me?</p> <p>5 Q. Yes.</p> <p>6 A. No.</p> <p>7 Q. Who does that recruiting?</p> <p>8 A. That would be Kathy Brummitt, or it</p> <p>9 could be a director might be involved in the process,</p> <p>10 but I don't have that knowledge because I'm not on site</p> <p>11 when -- or in offices when all of that stuff is going</p> <p>12 on.</p> <p>13 But I would say the person ultimately</p> <p>14 responsible is Kathy Brummitt, and she's been -- she's</p> <p>15 been with our company 30 years. She was the first</p> <p>16 employee of Sinclair, so she knows this industry. And</p> <p>17 we frequently use the same people in our -- because</p> <p>18 they're familiar with working with us and we're</p> <p>19 familiar with working with them.</p> <p>20 And so, you know, how one particular</p> <p>21 actor was discovered as a person that we would like to</p> <p>22 be in our film in the very beginning, I wouldn't have</p> <p>23 any knowledge of that at all, but I know that she would</p> <p>24 maybe be the one that would contact, you know, the</p> <p>25 agency that they work for or them directly depending on</p>
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<p>1 bar code, you know. That -- it could be more than an</p> <p>2 hour if our ---</p> <p>3 Q. If there's something wrong.</p> <p>4 A. --- server is ---</p> <p>5 Q. Right.</p> <p>6 A. --- there could be something wrong,</p> <p>7 yeah. I mean, you know, there are sort of these</p> <p>8 aggravating parts of this that are necessary for --</p> <p>9 because of keeping the records and the best available</p> <p>10 technology, you know, that we have that we can afford,</p> <p>11 you know, is not -- is not perfect.</p> <p>12 Q. Okay.</p> <p>13 A. That -- and I guess, just knowing all of</p> <p>14 that it makes it difficult for me to tell you exactly</p> <p>15 how long I feel like this takes. I really just know</p> <p>16 about how much of my job is dedicated to this, and ---</p> <p>17 Q. Which is?</p> <p>18 A. --- which is about half.</p> <p>19 Q. Half of it, 20 hours a week?</p> <p>20 A. (Indicates.)</p> <p>21 Q. Okay.</p> <p>22 A. I know the other stuff -- and that's</p> <p>23 just based on all of the other stuff that I do and</p> <p>24 about how easy I know my job used to be before I</p> <p>25 started doing this. I used to have a lot more time to</p>	<p>1 how their relationship is set up.</p> <p>2 Q. So the individuals that are depicted in</p> <p>3 Sinclair videos have agencies representing them?</p> <p>4 A. I -- I -- I don't have any knowledge of</p> <p>5 that.</p> <p>6 Q. Okay.</p> <p>7 A. I'm just thinking, you know, people who</p> <p>8 are in films typically work through agencies, but I</p> <p>9 don't have any -- I can't answer that.</p> <p>10 Q. Okay. And who do you report to in your</p> <p>11 work?</p> <p>12 A. Patrick Smith.</p> <p>13 Q. Patrick Smith.</p> <p>14 And who does Patrick report to?</p> <p>15 A. The -- he reports to Phil Harvey and</p> <p>16 David Groves. I believe David Groves is considered</p> <p>17 the CEO at PHE.</p> <p>18 Q. I'm sorry, you said David?</p> <p>19 A. Groves.</p> <p>20 Q. Who is David Groves?</p> <p>21 A. I believe he is the CEO of PHE.</p> <p>22 Q. Okay. I'm sorry, you said that, I did</p> <p>23 not get it. CEO of PHE.</p> <p>24 So Phil Harvey is not the CFO of PHE?</p> <p>25 A. Well, you just said CFO.</p>

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<p>1 Q. I'm sorry, CEO. The CEO of PHE is David 2 Groves?</p> <p>3 A. I believe Phil Harvey is considered the 4 president ---</p> <p>5 Q. Okay.</p> <p>6 A. --- and principal owner of PHE. And 7 David Groves is the CEO of PHE.</p> <p>8 Q. Owner. All right. Does PHE own 9 Sinclair?</p> <p>10 MS. BAUMGARDNER: Objection.</p> <p>11 A. I don't completely understand the 12 financial relationship, once again, between PHE and 13 Sinclair. I believe Phil Harvey is a shareholder in 14 Sinclair.</p> <p>15 Q. Okay.</p> <p>16 A. I know that our relationship -- among 17 the companies that are associated with PHE, I believe 18 our relationship is unique among those companies, and 19 that we are not considered a flanker company, but a 20 sister company. Whatever that means to people in 21 business. I'm not really sure what it means.</p> <p>22 Q. Okay. Do you know the year that the 23 Sinclair Institute was founded?</p> <p>24 A. That shouldn't be too hard. I want to 25 say 1993.</p>	<p>1 producer of the Wicked features, as well?</p> <p>2 A. Yes.</p> <p>3 Q. So, of the films that you decide to sell 4 on your website, you would be considered a secondary 5 producer for those films?</p> <p>6 A. Yes, unless they were proprietary, and 7 then we are the primary producer of those films.</p> <p>8 MR. BLADUELL: Okay.</p> <p>9 THE WITNESS: Can I go to the 10 restroom?</p> <p>11 MR. BLADUELL: Yes, we can have a 12 break. I was about to ask you that, but I saw that we 13 were close to lunch time, but why don't we have a 14 break, I can use it, too. Then we will be back here in 15 like in ten minutes?</p> <p>16 MS. BAUMGARDNER: Or less.</p> <p>17 MR. BLADUELL: Or less. Okay.</p> <p>18 (Recess 11:09 a.m. - 11:14 a.m.)</p> <p>19 Q. (BY MR. BLADUELL) Ms. Wilson, the 20 Sinclair Institute has a website called 21 sinclairinstitute.com; is that correct?</p> <p>22 A. That's correct.</p> <p>23 Q. And it also manages a website called 24 bettersex.com?</p> <p>25 A. That's correct.</p>
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<p>1 Q. Okay. And who founded the Sinclair 2 Institute?</p> <p>3 A. It was an out -- employee -- Kathy 4 Brummitt was working for PHE ---</p> <p>5 Q. Okay.</p> <p>6 A. --- and I think that somehow they 7 decided we're going to have another company to market 8 to another demographic and it's going to have a 9 different brand and a different purpose. And I know 10 that the people that made Sinclair were PHE employees. 11 How the business was structured is something I don't 12 understand.</p> <p>13 Q. Okay. Now, you said that Sinclair sells 14 Adam & Eve pictures, correct?</p> <p>15 MS. BAUMGARDNER: Objection.</p> <p>16 A. We have -- we buy Adam & Eve productions 17 and sell them in our catalog and on our website, in 18 addition to our own -- they are another 19 non-proprietary, basically, company that we purchased 20 and, you know?</p> <p>21 Q. Are you a secondary producer of those 22 materials?</p> <p>23 A. We would be considered a secondary 24 producer, yes.</p> <p>25 Q. Would you be considered a secondary</p>	<p>1 Q. What is the relationship between 2 Sinclair and the "Better Sex" website?</p> <p>3 A. The better -- the Sinclair Institute 4 website is designed to have more content related to 5 things that would help sexual, adult sexual, health 6 therapists identify products that their patients may be 7 interested in, or their clients may be interested in. 8 It has more information that a person 9 unfamiliar with the kinds of materials that we sell 10 could identify what would best help them or be the best 11 product for them to buy. 12 It contains articles about sexual health 13 and adult sexual health and adult sexual education. 14 We try to provide information to go 15 along with the products that we sell on 16 sinclairinstitute.com because we know that there is a 17 market of -- who -- who need this information. 18 The "Better Sex" website is not quite as 19 concerned with -- it -- the "Better Sex" website would 20 be for people more familiar with the kinds of products 21 that we sell. 22 So it is -- there is not as much written 23 content. Of course, there are descriptions of what we 24 sell, but what I feel like is different is that there 25 is not as much to read, to educate yourself by reading,</p>

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1	A. I could -- I could tell you this: If we	1	documents for.
2	sold that film, I know she would be -- I would know	2	Q. Okay. Now I'm going to show you another
3	exactly how old she was because I would have her ID.	3	document. I'm going to mark it as Exhibit Number 5.
4	Q. Okay. So the ID gives you the -- the	4	I'm going to provide you with a copy, and I'm going to
5	ID tells you the exact age?	5	provide a copy to your counsel.
6	A. Yeah.	6	Now Exhibit Number 5, do you see you on
7	Q. Okay. But just looking at that picture,	7	top on the left-hand corner that it has a web address?
8	can you tell the exact age ---	8	(Defendant's Wilson Deposition
9	MS. BAUMGARDNER: Objection.	9	Exhibit Number 5 Marked.)
10	Q. --- of that person depicted?	10	A. I do.
11	A. She just looks like an adult woman	11	Q. And it says "http"?
12	younger than I am, and I'm 50 years old.	12	A. With no "S."
13	Q. But the exact age? I mean, it's a yes	13	Q. With no "S," colon, forward slash,
14	or no question; can you tell the exact age?	14	forward slash, www.sinclairinstitute.com?
15	A. I cannot tell the exact age.	15	A. I see that.
16	Q. Okay. And that woman that's on Page 1	16	Q. Okay. www.sinclairinstitute.com is the
17	in the banner is on Page 2 of Exhibit Number 4,	17	website for the Sinclair Institute?
18	correct?	18	A. That is correct.
19	A. Page 1 of the banner and Page 2 of	19	Q. Okay. And below that we have the same
20	Exhibit Number 4, okay.	20	logo, Sinclair Institute, that appears on Exhibits 2
21	Q. All right. Is the same one?	21	and 4?
22	A. It appears to be, yes.	22	A. That is correct.
23	Q. Okay. And the three titles, "Erotic	23	Q. And the same phone number?
24	Stories Trilogy," "Recipe for Romance" and "A Little	24	A. That is correct.
25	Part of Me," that are on Page 1 are on Page 2?	25	Q. And the same tabs, "adult sex
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1	A. That is right.	1	education," "adult movies," "sex toys," "lubes and
2	Q. Okay. And below those titles are other	2	accessories," "new on sale," "sexual health articles"?
3	titles, correct?	3	A. Yes.
4	A. Correct.	4	Q. Now, there is a search box on top of
5	Q. There are nine titles on the second page	5	those titles and there is a word typed in there and the
6	of Exhibit Number 4?	6	word is "Young"?
7	A. They're actually ten because "Portrait	7	A. That's correct.
8	of a Call Girl" is also a title ---	8	Q. And below the titles it says, "Home>
9	Q. Okay. So that's a banner ---	9	Search Results For: Young"?
10	A. Yes.	10	A. Yes.
11	Q. --- that we've been talking about?	11	Q. Okay. In this -- the first page of
12	A. Yes. But there are nine titles there	12	Exhibit 5, there are three titles, correct?
13	underneath the banner title that I see, yes.	13	A. That's right.
14	Q. Okay. And do you recognize any of these	14	Q. "The Best of Nina Hartley 3" ---
15	titles as titles that Sinclair sells?	15	A. Uh-huh (yes).
16	A. Yes. The "Better Sex" -- "The Best of	16	Q. --- "Girls Wanting Girls" ---
17	the Better Sex Collection" is a proprietary title, and	17	A. That's right.
18	I believe I distinctly remember processing the 2257	18	Q. --- and "Teach Me"?
19	documents for -- for some reason "Recipe for Romance"	19	A. That's correct.
20	is escaping me; but, as you see, there's another film	20	Q. Are you familiar with these titles?
21	here called, "A Little Romance," and then another one	21	A. I am.
22	has "Romance" written real big across the front of it,	22	Q. What can you tell me -- how are you
23	but I recognize them as titles -- most of these	23	familiar?
24	specifically as titles that I remember in recent, you	24	A. Well, Nina Hartley was -- she's been in
25	know, in recent time as having processed the 2257	25	the business a very, very long time--I think Nina was a

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<p style="text-align: right;">Page 134</p> <p>1 for a Lifetime Volume 1" are proprietary titles. And 2 the other two are non-proprietary titles, but I'm 3 familiar with them.</p> <p>4 Q. And those are "My Girlfriend's Mother"?</p> <p>5 A. Yes.</p> <p>6 Q. And "British MILFs"?</p> <p>7 A. Yep. Yes.</p> <p>8 Q. Okay. Now, let's go back to the ones 9 that -- "Teach Me", on the first page.</p> <p>10 A. Uh-huh (yes).</p> <p>11 Q. You said that you processed 2257 12 documents for that?</p> <p>13 A. Pretty sure I did. I know I sent it out 14 for review ---</p> <p>15 Q. Okay.</p> <p>16 A. --- because they are recent.</p> <p>17 Q. And are you familiar with the content of 18 that film?</p> <p>19 A. I have not seen the film, no.</p> <p>20 Q. Okay.</p> <p>21 A. Only the images associated with the 22 marketing of the film.</p> <p>23 Q. And what does the images tell you about 24 the marketing of the film?</p> <p>25 A. Do you mean you want me to explain what</p>	<p style="text-align: right;">Page 136</p> <p>1 for the Sinclair Institute? 2 (Defendant's Wilson Deposition 3 Exhibit Number 6 Marked.)</p> <p>4 A. You mean at the bottom of the page right 5 here?</p> <p>6 Q. Yes.</p> <p>7 A. Yes, I do.</p> <p>8 Q. And do you see on top that it's "Teach 9 Me"?</p> <p>10 A. Yes.</p> <p>11 Q. The name of the title that appears on 12 Exhibit Number 5, right?</p> <p>13 A. Yes.</p> <p>14 Q. And then "Adult DVDs," and then it says, 15 "Lesbian"?</p> <p>16 A. Yes.</p> <p>17 Q. "Lesbian" would be the category of the 18 DVD under which "Teach Me" is at or sold?</p> <p>19 A. That's right.</p> <p>20 Q. Then -- now from this image, which is a 21 little bigger than the one in Exhibit Number 5, can you 22 tell if someone is -- it depicts two women, correct?</p> <p>23 A. That is correct.</p> <p>24 Q. And is one older than the other?</p> <p>25 A. I'm reading the copy that was written</p>
<p style="text-align: right;">Page 135</p> <p>1 I think the film is about just by looking at the 2 images?</p> <p>3 Q. Yes.</p> <p>4 MS. BAUMGARDNER: Objection.</p> <p>5 A. I think that it is -- it looks like --</p> <p>6 on "Teach Me," there are two people on the front cover, 7 and I would think that that particular film may be 8 about one person teaching another person certain 9 techniques. And some people find that -- some adults 10 find that visually stimulating and -- and ---</p> <p>11 Q. Sexual techniques, you mean?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. Is one person older than the 14 other?</p> <p>15 A. It's hard to tell.</p> <p>16 Q. Okay. I'm going to mark another 17 exhibit, Exhibit Number 6.</p> <p>18 A. Do you have the IDs for these people? 19 Some of these images would require you if you ---</p> <p>20 Q. I don't.</p> <p>21 I'm going to hand Exhibit Number 6 to --</p> <p>22 a copy of Exhibit Number 6 to counsel. I'm going to</p> <p>23 hand an Exhibit to the witness and I keep a copy.</p> <p>24 Can you tell me -- do you see in this 25 Exhibit Number 6 at the bottom that it has an address</p>	<p style="text-align: right;">Page 137</p> <p>1 for this film.</p> <p>2 Q. Oh, okay, but just from the film, from 3 the cover?</p> <p>4 A. From the picture, can I tell that one is 5 -- can I accurately say that one of these people is 6 older than the other one? No.</p> <p>7 Q. Okay. Now, if you read down, it says --</p> <p>8 the description for this film, it says, "Drop dead 9 gorgeous cougars school nubile newbies in the art of 10 lesbian love! Legendary Julia Ann demonstrates 11 cunnilingus on young 18 plus lover Jessie, bringing the 12 girl next door to pulsating climax. Freckled redhead 13 Darla Crane teaches adorable coed Allie the pleasures 14 of her G-spot, with each woman taking a turn as 15 ecstatic guinea pig. During a sweaty session, busty 16 Lisa Ann introduces innocent Jana to the thrills of 69, 17 with provocative interviews and scorching bonus 18 features!"</p> <p>19 A. Yes.</p> <p>20 Q. Did I read that accurately?</p> <p>21 A. You did.</p> <p>22 Q. Okay. From that description, is it 23 reasonable to say that one of the -- in the first 24 sentence, one of the artists or performers, let's say, 25 is much older than the other one?</p>

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<p>1 A. Well, because it says, "legendary," that 2 makes me think that the person who is Julia Ann, even 3 if I didn't know who Julia Ann is, and I do, that would 4 make me assume that that person was older than her 5 lover, Jessie.</p> <p>6 Q. Is Julia Ann depicted in the picture?</p> <p>7 A. Julia Ann is the one, I believe, the one 8 that is more facing -- more blonde ---</p> <p>9 Q. Okay.</p> <p>10 A. --- kind of facing the ---</p> <p>11 Q. Okay. And that's the cougar?</p> <p>12 MS. BAUMGARDNER: Objection.</p> <p>13 A. I believe the word, "cougar" indicates a 14 woman that is ---</p> <p>15 Q. Applied to Julia Ann?</p> <p>16 A. I think Sarah Palin was considered a 17 cougar.</p> <p>18 Q. But in this context, it is a word used 19 to describe Julia Ann?</p> <p>20 A. Yes.</p> <p>21 Q. And the young one, Jessie, is that -- do 22 you know if that's the one depicted here?</p> <p>23 A. I do not know that.</p> <p>24 Q. Okay. But it says that she's young?</p> <p>25 A. Yes. Eighteen (18) plus is what it</p>	<p>1 terms where they are used -- you know, we had nothing 2 to do with the production of the video.</p> <p>3 Q. Uh-huh (yes).</p> <p>4 A. But, you know?</p> <p>5 Q. Do you know who produced this one?</p> <p>6 A. I believe that -- I want to say this 7 might be a "New Sensations" video, but I'm not totally 8 sure. It's hard for me to read the -- it's hard for me 9 to read, you know, what the letters -- what the words 10 say that are on the package.</p> <p>11 Q. Okay.</p> <p>12 A. But I would know if it were in front of 13 me because I could read it and it would be a part of 14 all of the records that are kept.</p> <p>15 Q. Now, the lover Jessie, it says that 16 she's 18-plus, right?</p> <p>17 A. Which is still legal, I believe, right?</p> <p>18 Yes, it does say that.</p> <p>19 Q. Do you think it's -- what do you think 20 -- is it legal, 18-plus?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. And -- but it doesn't say her 23 exact age, correct?</p> <p>24 A. No, it doesn't.</p> <p>25 Q. So you wouldn't -- and assuming that</p>
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<p>1 says.</p> <p>2 Q. Okay. Now, there's -- besides a scene 3 between these two, there is also in this -- from the 4 description of the video, the description describes 5 another scene between "Darla Crane teaches adorable 6 coed Allie," correct?</p> <p>7 A. That's right.</p> <p>8 Q. Do you know what the term, "coed" means?</p> <p>9 A. Yes.</p> <p>10 Q. What does it mean?</p> <p>11 A. To me, it means someone who goes to a 12 university with males and females allowed to go to the 13 university.</p> <p>14 Q. A student or a professor?</p> <p>15 A. A student.</p> <p>16 Q. Okay. And Sinclair -- the Sinclair 17 Institute is a secondary producer of the image ---</p> <p>18 A. That's correct.</p> <p>19 Q. --- that's on the website?</p> <p>20 A. Uh-huh (yes).</p> <p>21 Q. You don't consider yourself a secondary 22 producer of the actual content of the video?</p> <p>23 A. That's correct.</p> <p>24 Q. Okay.</p> <p>25 A. The way that I understand those two</p>	<p>1 Jessie is the one depicted here, you would not know her 2 exact age by just looking at the picture, correct?</p> <p>3 A. That is correct.</p> <p>4 Q. You would need an ID to know her exact 5 age?</p> <p>6 A. I would have her ID with her 2257 stuff 7 if I were the, you know?</p> <p>8 Q. But, yes or no, would you need her ID to 9 know her age?</p> <p>10 A. To know her exact age, yes.</p> <p>11 Q. Okay.</p> <p>12 A. And we have her ID.</p> <p>13 Q. You know that for a fact?</p> <p>14 A. I know it for a fact because we wouldn't 15 be able to sell this film if we didn't. We wouldn't be 16 able to order the product.</p> <p>17 That was what I was explaining to you 18 about the way that our AS/400 and our VLS are set up.</p> <p>19 Q. Do you know when this film -- when you 20 process these documents?</p> <p>21 A. Do I know when I processed the documents 22 for that film?</p> <p>23 Q. Yes, what year?</p> <p>24 A. No; but it seems to me like it's been 25 pretty recent. I kind of -- the title is in my head</p>

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<p>1 Q. Is she -- she's wearing pigtails, 2 correct?</p> <p>3 A. That's right.</p> <p>4 Q. Is that something that people in their 5 30s usually do?</p> <p>6 MS. BAUMGARDNER: Objection.</p> <p>7 A. I don't know. I never wore pigtails, 8 ever.</p> <p>9 Q. Okay. Now if we go to the description 10 of the film, it says, "The folks next door like it 11 sweaty & slippery! Body beautiful Melanie gets 12 dripping wet while riding her hubby to multiple orgasm. 13 Young 18-plus, fresh faced gymnast Trinity and her BMOC 14 beau engage in positions even we've never seen, peaking 15 in both male and female ejaculation. Just as wild, a 16 youthful 'Santa Claus' penetrates his sexy Mrs. to 17 drenching climax under the Christmas tree."</p> <p>18 A. "Sexy Mrs."</p> <p>19 Q. Okay. Is that right; did I read that 20 accurately?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. Do you know what "BMOC" means?</p> <p>23 A. Big man on campus.</p> <p>24 Q. Okay. And is that a term that you have 25 come to know through your work at Sinclair?</p>	<p>1 A. That's correct.</p> <p>2 Q. Now, do you know the difference between 3 a 17-year-old and an 18-year-old?</p> <p>4 MS. BAUMGARDNER: Objection. In 5 what way?</p> <p>6 A. In what way? Yeah, I don't -- wouldn't 7 even know how to ---</p> <p>8 Q. Can you tell a -- if I show you two 9 people, could you tell -- and one is 17 and one 18, 10 could you accurately tell which one is 18 and 17?</p> <p>11 MS. BAUMGARDNER: Objection.</p> <p>12 A. No.</p> <p>13 Q. Do you know the, physically speaking, 14 the differences between a 17-year-old and an 15 18-year-old?</p> <p>16 A. Are there physical differences? I mean 17 ---</p> <p>18 Q. So you don't know if there are?</p> <p>19 A. It just seems like an arbitrary sort of, 20 you know, I mean, I'm not even really sure what you're 21 asking me. It doesn't seem like a -- I guess I'm 22 trying to answer your question based on some sort of 23 logic.</p> <p>24 Q. Yeah.</p> <p>25 A. And I don't understand your logic.</p>
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<p>1 A. I think I've probably understood that 2 term since I watched a film on television growing up in 3 ---</p> <p>4 Q. Okay.</p> <p>5 A. --- you know, maybe like "My Three Sons" 6 or something.</p> <p>7 Q. Okay. I mean, from the description, 8 it's pretty clear that the individuals are young and 9 youthful, correct?</p> <p>10 MS. BAUMGARDNER: Objection.</p> <p>11 A. From the description it sounds like it, 12 which as far as I know, that's legal.</p> <p>13 Q. Okay.</p> <p>14 A. Still.</p> <p>15 Q. I'm sorry, I forgot. Did you say that 16 you processed 2257 documents for this picture?</p> <p>17 A. I would have to look at our AS/400 to 18 give you an accurate record.</p> <p>19 Q. So you don't remember right now?</p> <p>20 A. I don't remember this specific one.</p> <p>21 Q. Okay.</p> <p>22 A. But if we sell it, they've been 23 processed and certified.</p> <p>24 Q. Now it says, "Young 18-plus" here in the 25 description, correct?</p>	<p>1 Q. Is -- I mean, do you know in there are 2 physical differences between 17-year-olds and 3 18-year-olds?</p> <p>4 A. I don't know if there are.</p> <p>5 Q. Okay.</p> <p>6 A. There could be.</p> <p>7 Q. Okay. So ---</p> <p>8 A. Depending on the 17-year-old or the 9 18-year-old.</p> <p>10 Q. Would you have difficulty in telling a 11 17-year-old from an 18-year-old?</p> <p>12 MS. BAUMGARDNER: Objection.</p> <p>13 A. Would I have difficulty? I don't know. 14 That would probably depend.</p> <p>15 MR. BLADUELL: On the person. 16 Okay.</p> <p>17 Why don't we take a break now and 18 we come back around 1:15?</p> <p>19 MS. BAUMGARDNER: I'd like to --</p> <p>20 because Ms. Wilson has a pet that she needs to tend to, 21 I'd like to take a shorter lunch because it looks like 22 you still have a lot of ground to cover.</p> <p>23 MR. BLADUELL: That's fine. Why 24 don't we say -- did I say, what, 1:15?</p> <p>25 MS. BAUMGARDNER: You said 1:15.</p>

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<p>1 Can we make it like -- I have 12:25, so could we make 2 it 20?</p> <p>3 (Recess 12:25 p.m. - 12:52 p.m.)</p> <p>4 Q. (BY MR. BLADUELL) Ms. Wilson, I am 5 going to show you, again, Exhibit Number 2, which it 6 contains titles for which Sinclair Institute is the 7 primary producer, correct?</p> <p>8 A. That's correct.</p> <p>9 Q. And is it your -- do you have a practice 10 with respect to what age your performers have to be to be 11 included in these videos?</p> <p>12 A. We have identified that in our market 13 people have a range of interests in what they find 14 attractive and not attractive. We -- we do try to use 15 much older performers, sometimes, than might be in 16 videos because our market is often older adults.</p> <p>17 So we know that older adults also like 18 looking at people who are, you know, more fit than an 19 older adult is able to maintain. When I say "older 20 adult," I mean 60, 70, I mean. But we make films for 21 people throughout their lifetime for their sex lives.</p> <p>22 But we don't have any rules other than 23 what -- you know, we follow the rules that creators of 24 adult content have to follow, but we don't have a kind 25 of ageism in our company.</p>	<p>1 A. There are -- there are no -- there are 2 no rules. If an adult film can be certified, you know, 3 by its producers as being legal, then it can be 4 considered if it meets our standards of our company.</p> <p>5 Q. Okay. When you said before that your -- 6 you said before that your company had done some market 7 research ---</p> <p>8 MS. BAUMGARDNER: Objection.</p> <p>9 Q. --- to determine what your viewers like.</p> <p>10 A. Our -- many of our viewers write us 11 letters and tell us what they want to see. And also, 12 because we have an advisory board of professional 13 educators and therapists and researchers, they -- we 14 consult with them about what people need, you know, 15 what our market needs as far as -- you know, especially 16 our proprietary videos, we want to know what are the 17 issues that are concerning adults and sexuality that 18 they're going to see therapists for that the educators 19 are doing research on.</p> <p>20 And so, in that sense, you know, we are 21 very much in touch with ---</p> <p>22 Q. But you said -- I mean, you said just a 23 moment ago that your research indicated something 24 related to fitness of the models ---</p> <p>25 MS. BAUMGARDNER: Objection.</p>
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<p>1 Q. So is it accurate to say that one rule 2 with respect to ages is that all of the performers have 3 to be above 18?</p> <p>4 A. All of our performers are adults; yes.</p> <p>5 Q. And is there a rule that performers have 6 to be above 30?</p> <p>7 MS. BAUMGARDNER: Objection.</p> <p>8 A. There -- we really don't have any rules, 9 other than the rules that, you know, common decency and 10 the law would consider appropriate.</p> <p>11 Q. You don't -- you don't restrict the 12 individuals appearing in your films to people over 30?</p> <p>13 MS. BAUMGARDNER: Objection.</p> <p>14 A. We do not.</p> <p>15 Q. Is that the same case -- is it the same 16 for people, for individuals, appearing in the videos 17 for which you are a secondary producer?</p> <p>18 A. I'm sorry?</p> <p>19 Q. Is it the same practice for individuals 20 appearing in the pictures for which you are a secondary 21 producer?</p> <p>22 MS. BAUMGARDNER: Objection.</p> <p>23 A. In other words, do we have any rules 24 about how -- what age range the people that are ---</p> <p>25 Q. Yeah.</p>	<p>1 Q. --- of the people depicted.</p> <p>2 A. When I say research ---</p> <p>3 MS. BAUMGARDNER: Let me just -- I 4 just want to object.</p> <p>5 MR. BLADUELL: Sure. And you can 6 answer the question.</p> <p>7 MS. BAUMGARDNER: Yes. Go ahead.</p> <p>8 A. When I say "research," I'm using that 9 term very loosely.</p> <p>10 Q. Okay. So what do you mean by that?</p> <p>11 A. I mean what we know, what we understand.</p> <p>12 Q. How do you come to that understanding?</p> <p>13 A. The way that any company that sells any 14 product would come to the understanding, through people 15 in their own industry who they have conversations with, 16 people they may meet at a trade show or at a 17 professional conference.</p> <p>18 We also consult sexuality studies.</p> <p>19 Because we are in the adult sexual health and education 20 industry, we feel like it is our responsibility to our 21 market to provide them with topics, you know, to cover 22 topics that they are most interested in, and, you know, 23 sometimes it's just a matter of hearsay, just what you 24 hear, you know?</p> <p>25 And we have people write us letters</p>

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<p style="text-align: right;">Page 174</p> <p>1 study session with a blond jock into hot dorm room 2 fellatio & intercourse. Irresistible cheerleader 3 Taylor manages to accommodate all of a hugely hung 4 basketball player in the men's locker room. Feeling 5 daring, blonde 4'11" Sasha deep throats her law student 6 beau in the library stacks. School is in session!" 7 A. Yes. 8 Q. What does that description tell you 9 about the ages of the performers in this? 10 A. Well, I know that coeds are college 11 students. We don't typically refer to people in high 12 school as coeds. 13 It says that these people are petite, 14 which is something that some people prefer, and that 15 none of them have had their breasts altered. 16 Q. Now, have you looked at the images on 17 the cover, are they -- is it reasonable to say that 18 these are people that are around the age of 18? 19 MS. BAUMGARDNER: Objection. 20 A. They are younger than I am, and I'm 50. 21 Q. Okay. So you cannot -- do they look 22 like they're 18? 23 MS. BAUMGARDNER: Objection. 24 A. I couldn't say. 25 Q. Could they be younger than 18?</p>	<p style="text-align: right;">Page 176</p> <p>1 A. Like totally out of context, right? 2 Q. Yes. 3 A. I would say there is no way that I could 4 tell you exactly how old they are. 5 Q. Okay. If we go below the image to the 6 left, to the right of the description, it says, 7 "Genre," correct? 8 A. Uh-huh (yes). 9 Q. Says, "Gonzo"? 10 A. Uh-huh (yes). 11 Q. What is "Gonzo"?" 12 A. I'm not sure. It's a category -- it's a 13 porn movie category, but I'm not sure what it means. 14 Q. Okay. 15 A. I mean, I understand some of the more 16 obvious ones, like lesbian or heterosexual or -- but I 17 don't know what "Gonzo" means. 18 Q. And "Younger"?" 19 A. "Younger, 18 + women." 20 Q. What does that mean? 21 A. It means that they are younger women 22 over 18. 23 Q. Younger than what? 24 A. Younger than older women. Over 18 -- 25 you know, way over 18, perhaps 30 years more than 18.</p>
<p style="text-align: right;">Page 175</p> <p>1 MS. BAUMGARDNER: Objection. 2 A. No. 3 Q. Why do you say that they're --- 4 A. They just don't look younger than 18 to 5 me. 6 Q. Okay. 7 A. And I happen to know that they aren't 8 because we carry the film and we have all the IDs. 9 Q. But just looking at the picture, why can 10 you -- why do you say that they don't look younger than 11 18? What are the characteristics that make you say 12 that? 13 A. They are pretty fully developed young 14 women. I mean, they don't look like children. 15 Q. Okay. So looking at them, you would not 16 think that they could be under 18? 17 A. Did you say looking at them I could not 18 think that? 19 Q. Yes. 20 A. I think, you know, I don't -- I don't 21 really think that -- if what you're asking me is, would 22 I think they're under 18, no, because they are on the 23 front of a porn movie. 24 Q. Right. But just looking at the image 25 without knowing ---</p>	<p style="text-align: right;">Page 177</p> <p>1 Q. Okay. And "Pulse Pictures" --- 2 A. I mean, "18 +" means they're over 18, 3 that they're younger women, not dead women, but 4 younger. Do you know what I'm saying? I mean --- 5 Q. Well, does that category, "Younger, 18 6 plus," would it be accurate to apply it to people who 7 are 30 and are in movies? 8 A. I'm 50, and I consider a 30-year-old 9 woman younger. 10 Q. Okay. But from -- that's a different 11 kind of question. 12 My question is: when you're going to put 13 the label, "Younger, 18 plus," would it be accurate to 14 put that label for movies depicting people 30 and over? 15 MS. BAUMGARDNER: Objection. 16 A. I don't -- I really don't know. I don't 17 -- I don't -- I'm not in the mind of the people that do 18 this. 19 Q. Categorize? 20 A. That categorize our -- yeah. I just 21 know what it says and you're asking me what it means to 22 me. 23 Q. Uh-huh (yes). 24 A. And what it means to me is that they are 25 over 18 and they are younger, probably, than I am</p>

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<p style="text-align: right;">Page 226</p> <p>1 A. --- Page 9, 11 ---</p> <p>2 Q. Yeah. "Sinclair Institute shoulders all</p> <p>3 these burdens despite the fact that the expression it</p> <p>4 produces and distributes is important expression</p> <p>5 depicting adults that could in no way be confused as</p> <p>6 child pornography."</p> <p>7 Did I read that accurately?</p> <p>8 A. You did.</p> <p>9 Q. And child pornography, what do you</p> <p>10 understand child pornography to be?</p> <p>11 A. Child pornography is -- the way that I</p> <p>12 understand it is not adults, but children, who are</p> <p>13 misused in visual depictions that could be construed as</p> <p>14 sexual.</p> <p>15 Q. When you say "adults," you mean what</p> <p>16 age?</p> <p>17 MS. BAUMGARDNER: Objection.</p> <p>18 A. What the law says adults are.</p> <p>19 Q. And do you know what that is?</p> <p>20 A. Eighteen (18) years old.</p> <p>21 Q. Okay. So child pornography is</p> <p>22 everything under 18 years old, correct?</p> <p>23 A. I don't know how the law defines child</p> <p>24 pornography, but I know that our company is an adult</p> <p>25 company and we only use adults.</p>	<p style="text-align: right;">Page 228</p> <p>1 it accurate to say that you mean people below the age</p> <p>2 of 18 or do you mean younger than that?</p> <p>3 A. I don't know -- I mean, we know that</p> <p>4 adults in our -- I mean, the law seems to be based on</p> <p>5 what the general population considers to be normal</p> <p>6 behavior. and it was decided that 18 was the age of</p> <p>7 adult.</p> <p>8 Q. Okay.</p> <p>9 A. You know, and I, you know, I think that,</p> <p>10 you know, if you've graduated from high school and</p> <p>11 you've -- you know, you can leave home and you know</p> <p>12 your parents no longer have any say in your life, if</p> <p>13 you don't want it that way, you know, and so that's an</p> <p>14 adult, and so, I would say that, you know -- when I</p> <p>15 think child pornography, I do think little kids, but,</p> <p>16 you know, and then I think adults are 18 and up even</p> <p>17 though you can't drink until you're 21.</p> <p>18 Q. Okay. But adults are 18 and up,</p> <p>19 correct?</p> <p>20 A. Yes.</p> <p>21 Q. Adult?</p> <p>22 And child would be under 18, correct?</p> <p>23 A. I don't call 17-year-olds children.</p> <p>24 Q. Okay. So you probably would not</p> <p>25 consider ---</p>
<p style="text-align: right;">Page 227</p> <p>1 Q. Okay. Would depictions of sexual</p> <p>2 intercourse between 17-year-olds, would that be child</p> <p>3 pornography?</p> <p>4 MS. BAUMGARDNER: Objection.</p> <p>5 A. I thought it was like statutory rape or</p> <p>6 something like that.</p> <p>7 Q. Okay. So you don't know if it's</p> <p>8 considered child pornography?</p> <p>9 A. I don't know the definition of child</p> <p>10 pornography.</p> <p>11 Q. Okay. But when you wrote this, right,</p> <p>12 because you wrote this correctly -- correct?</p> <p>13 MS. BAUMGARDNER: With the</p> <p>14 assistance of counsel.</p> <p>15 Q. Okay. So, do you remember writing this?</p> <p>16 A. I mean, I remember almost every single</p> <p>17 bit of this.</p> <p>18 Q. Okay. So ---</p> <p>19 A. Some of it I don't remember to the</p> <p>20 letter, but I know that these are -- that this is true</p> <p>21 and that these words are my words and that these</p> <p>22 calculations were calculations I made at my desk and</p> <p>23 typed into a document and provided the lawyer with.</p> <p>24 Q. That's fine.</p> <p>25 So when you say "child pornography," is</p>	<p style="text-align: right;">Page 229</p> <p>1 A. They can have children themselves, so I</p> <p>2 think ---</p> <p>3 Q. So you would not ---</p> <p>4 A. --- that it gets a little mushy. We</p> <p>5 just follow the law in our business.</p> <p>6 Q. Depictions of 17-year-olds, you,</p> <p>7 personally, would not consider it as child</p> <p>8 pornography?</p> <p>9 MS. BAUMGARDNER: Objection.</p> <p>10 A. I can't answer that. It just seems so</p> <p>11 off the wall. I mean, it's -- it's so incredibly</p> <p>12 hypothetical, I just don't know how to answer it.</p> <p>13 Q. What if ---</p> <p>14 A. I don't consider 17-year-olds children.</p> <p>15 I don't know what the legal definition of child</p> <p>16 pornography is.</p> <p>17 MR. BLADUELL: Oops, sorry. For</p> <p>18 the record, the lights are off again.</p> <p>19 Q. I'm sorry?</p> <p>20 A. I don't know what the definition of</p> <p>21 child pornography, the legal definition of child</p> <p>22 pornography is.</p> <p>23 Q. I'm not asking for the legal, for your</p> <p>24 -- for your definition. I mean, you said a moment ago,</p> <p>25 child pornography, I think of kids. Does that mean</p>

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<p style="text-align: right;">Page 238</p> <p>1 A. (Indicates yes.) 2 Q. Yes? 3 A. Yes. 4 Q. And that server, does it contain other 5 type of information other than 2257 records? 6 A. I would have to look at what -- I would 7 have to review the Answers in order to know --- 8 Q. So you don't -- right now you don't 9 know? 10 A. It's technical knowledge and I just 11 don't -- I don't have it at my --- 12 Q. You don't -- you don't know? 13 A. I don't know if it's separate or, you 14 know, I know that there was a separate -- I know a 15 separate program was commissioned and paid for so that 16 the 2257 records could be kept on our -- in our VLS 17 Program with our images. 18 It may be a completely separate machine, 19 I just don't know, and I wouldn't even know what it 20 looked like. 21 Q. Okay. 22 A. Or where it is. 23 Q. Okay. So that's -- if we see the server 24 -- you mean, you don't know -- you don't know if it's 25 in the Sinclair building?</p>	<p style="text-align: right;">Page 240</p> <p>1 Q. And do you know if it contains records 2 for other PHE companies? 3 A. We share all of the 2257 records, so the 4 server exists -- every -- the server -- we have access 5 to all of the records on the server. So, does that 6 answer your --- 7 Q. Yes. So the server would contain 8 records from Adam & Eve, correct? 9 A. And if we needed them and Adam & Eve 10 hadn't put them on there, we'd have to put them on 11 there. 12 Q. And there's another company in the 13 Sinclair Building, which is affiliated with PHE? 14 A. Temptations Parties. 15 Q. Temptations. 16 Would those records be there as well? 17 A. Yes, very little of their stuff would 18 fall under this stuff because it's very tame. 19 Q. Are there other companies that would 20 have -- that are not Sinclair that would be -- that 21 would have records in that server? 22 A. That carry the same films that we do. 23 If they --- 24 Q. So what are these other --- 25 A. We share the records.</p>
<p style="text-align: right;">Page 239</p> <p>1 A. We have a server in our building. 2 Q. Well, let's go to -- so you have a 3 conflict? 4 A. I don't think that it is because I think 5 that's why it takes so long for us to upload the images 6 is because it's not on site, it has to go through, you 7 know, digital communication that isn't immediate. My 8 best guess would be that it is not on site at our ---- 9 Q. When you say that it would be in PHE if 10 it's not Sinclair, the building? 11 A. That's my guess. 12 Q. Okay. If we go to Page 4 here, the last 13 paragraph on this Exhibit 16, Page 4, which is your 14 Answer to Interrogatory Number 14, says, "In 2006, PHE, 15 Inc. purchased a server for the purpose of maintaining 16 records under 18 U.S.C. 2257 at the cost of 17 \$105,524.39." 18 A. Uh-huh (yes). 19 Q. "In 2009 Sinclair Institute converted 20 its paper records to digital format for the purpose of 21 storing them on the server at a cost of \$12,000.00." 22 A. Yes. 23 Q. So the server was purchased by PHE, 24 Inc., correct? 25 A. Yes.</p>	<p style="text-align: right;">Page 241</p> <p>1 Q. So what are these other companies? 2 MS. BAUMGARDNER: Objection. 3 A. Adam Male. 4 Q. Adam Male. Okay. 5 A. That's the only one that I know of. And 6 Temptations would have very little because -- so Adam & 7 Eve and --- 8 Q. Temptations and Adam Male? 9 A. Yes. Yes, and Adam & Eve and Sinclair, 10 we all have access to all of the records on the server 11 except for that they don't have access to ours. 12 Q. Okay. Do you know if Sinclair paid a 13 portion of that one hundred thousand (100,000) for the 14 server? 15 A. I don't know what the -- I don't know 16 what the financial arrangement is at all. I just know 17 that if it weren't for that server, we couldn't keep 18 these records. 19 Q. So you don't know where the money came 20 to purchase that server? 21 A. No. 22 Q. Now in --- 23 A. PHE, Inc., I guess it says, purchased a 24 server. 25 Q. Okay. So the money came from PHE, Inc.?</p>

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<p style="text-align: right;">Page 266</p> <p>1 you would be secondary producers?</p> <p>2 A. No, I think it's about -- it's about the</p> <p>3 same for that, too.</p> <p>4 Q. Okay.</p> <p>5 A. I mean, there are -- most of the people</p> <p>6 are in their 20s and 30s.</p> <p>7 Q. Okay. Yeah. So 70 percent if we add</p> <p>8 this percentages would be in the 20s and 30s?</p> <p>9 A. Of what I see.</p> <p>10 Q. Okay.</p> <p>11 A. So that's like what we carry.</p> <p>12 Another company may carry a hundred</p> <p>13 percent of material where they make sure everybody is</p> <p>14 20 years old, I don't know, but this is just what I --</p> <p>15 it seems to be of all of the things available to us to</p> <p>16 sell, this is the representative, that's what I see.</p> <p>17 Q. Okay. Let me give you another document.</p> <p>18 Seventeen, Exhibit Number 17 I am marking. It is</p> <p>19 titled, "Townsend Sinclair Video Sales 2005 thru 2009."</p> <p>20 Providing a copy of the exhibit to Ms. Wilson and one</p> <p>21 to counsel.</p> <p>22 Ms. Wilson, have you seen this document</p> <p>23 before?</p> <p>24 (Defendant's Wilson Deposition</p> <p>25 Exhibit Number 17 Marked.)</p>	<p style="text-align: right;">Page 268</p> <p>1 Exhibit Number 17 when it says, "retail," do you know</p> <p>2 what that would mean?</p> <p>3 A. We have a retail division and a</p> <p>4 wholesale division, and the total number could be split</p> <p>5 up between those divisions.</p> <p>6 Q. And units, would that be individual</p> <p>7 number of videos?</p> <p>8 A. That -- I would think that that's what</p> <p>9 this means.</p> <p>10 Q. And those -- that would include the</p> <p>11 Sinclair videos for which you are the primary producer,</p> <p>12 such as the "Better Sex" videos, correct?</p> <p>13 A. That I would have no way of knowing from</p> <p>14 looking at this.</p> <p>15 Q. Okay.</p> <p>16 A. And, like I said, I don't really</p> <p>17 completely -- I don't remember -- I don't have full</p> <p>18 knowledge of my memory of this. I just remember some</p> <p>19 -- knowing that I would -- had I been asked this, I</p> <p>20 would not have been able to give this information, it</p> <p>21 would have had to come from accounting.</p> <p>22 Q. So you don't know if in these figures --</p> <p>23 you don't know if these figures include titles for</p> <p>24 which you are secondary producer of the covers?</p> <p>25 A. If you'll give me a second to look at it</p>
<p style="text-align: right;">Page 267</p> <p>1 A. This must have come from our -- the</p> <p>2 information must have come from our accounting</p> <p>3 department, and I honestly cannot remember if I've ever</p> <p>4 seen it before.</p> <p>5 Q. Okay.</p> <p>6 A. I would not have had this information.</p> <p>7 We would have had to ask accounting for it because</p> <p>8 these are very specific numbers.</p> <p>9 Q. Do you remember counsel asking you for</p> <p>10 that information?</p> <p>11 A. Obviously I can't remember.</p> <p>12 Q. Okay. And you don't remember in</p> <p>13 relation to this litigation looking up this</p> <p>14 information?</p> <p>15 A. I would not have had access to it. We</p> <p>16 would have had to ask someone else for the -- we would</p> <p>17 have had to ask accounting.</p> <p>18 Q. Yes, I understand that, but do you</p> <p>19 remember doing that, asking accounting?</p> <p>20 A. I remember e-mails where Ginger and</p> <p>21 Patrick were cc'd that talked about financial numbers.</p> <p>22 I can't remember if it was sales or if it were costs.</p> <p>23 Q. Ginger Stallings?</p> <p>24 A. Stallings, uh-huh (yes).</p> <p>25 Q. Okay. And do you know what -- in this</p>	<p style="text-align: right;">Page 269</p> <p>1 and think about it, I might be able to give you a</p> <p>2 guess.</p> <p>3 Q. Okay.</p> <p>4 A. Okay. Because I just know about how</p> <p>5 much money we gross per year; and if this were wildly</p> <p>6 under that, then I would have to assume it was only our</p> <p>7 videos. Okay?</p> <p>8 Q. Okay.</p> <p>9 A. My guess is this is total and not just</p> <p>10 Sinclair Institute for proprietary video sales.</p> <p>11 Q. And that's -- and that's -- can explain</p> <p>12 your reasoning?</p> <p>13 A. I just know that we sell more than</p> <p>14 videos. I know we sell a lot of other companies'</p> <p>15 videos. We have a lot of other companies' videos in</p> <p>16 our catalog. The majority of the videos in our catalog</p> <p>17 are other companies' videos.</p> <p>18 Q. So if we look at the grand total, is</p> <p>19 that 52 million?</p> <p>20 A. That's what it -- that's what I'm</p> <p>21 reading on this paper.</p> <p>22 Q. From 2005 to 2009, you would ---</p> <p>23 A. In sales.</p> <p>24 Q. Yeah. It would not be -- it would not</p> <p>25 be accurate to assume that you just -- you made 52</p>

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<p>Page 278</p> <p>1 consulted the Council on the standards for Sinclair? 2 MS. BAUMGARDNER: Objection. 3 A. No. 4 Sorry, I didn't mean to interrupt you. 5 No. 6 Q. And your opinion that they were -- that 7 the standards were developed in consultation with this 8 Council is based on what someone told you about it? 9 MS. BAUMGARDNER: Objection. 10 A. It's based on my general understanding 11 after working with these people all of these years and 12 seeing their faces on the back of our videos and seeing 13 little spots of our videos where they are talking and 14 -- I'm sure they are re compensated for being in our 15 films. 16 Q. Are these standards written anywhere? 17 A. Probably. But I don't have to access 18 them, I just know that they are constantly referred to 19 in our reviews and discussed in front of me. But I 20 don't see them. 21 Q. Okay. Are they publicly available? 22 MS. BAUMGARDNER: Objection. 23 A. I don't know. 24 Q. Okay. But have you seen a paper 25 describing the standards?</p>	<p>Page 280</p> <p>1 have nothing. 2 MR. BLADUELL: Nothing? Okay. 3 (Whereupon, the deposition of 4 LINDA DIAN WILSON was concluded at 4:17 PM.) 5 - - - 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>
<p>Page 279</p> <p>1 A. I've seen a paper that has our mission 2 statement on it. 3 Q. Okay. But not the standards that you're 4 --- 5 A. That they go by for the reviewing, no. 6 I just hear it referred to all the time. 7 Q. Okay. Have you met some of the 8 individuals here? 9 MS. BAUMGARDNER: Objection. 10 A. I have met Lori Buckley. I have met -- 11 I talk to Eli Coleman. I have talked to some of these. 12 I've talked to -- I've met Beverly Whipple. They have 13 come by our building for a little event that we had. 14 Q. So, have your -- your discussions with 15 them have been informal --- 16 A. Yes. 17 Q. --- discussions, not necessarily about 18 the videos? 19 A. Correct. 20 MR. BLADUELL: Okay. I have no 21 further questions at this time. 22 I would like to thank you for your 23 answers and your patience. 24 THE WITNESS: Sure. 25 MS. BAUMGARDNER: Thank you. I</p>	<p>Page 281</p> <p>STATE OF NORTH CAROLINA COUNTY OF WAKE CERTIFICATE OF TRANSCRIPT I, Margaret M. Powell, Certified Verbatim Reporter-Notary Public, the officer before whom the foregoing proceeding was taken, do hereby certify that the attached transcript is a true, correct and verbatim record of this proceeding. I further certify that I am neither counsel for, related to, nor employed by any of the parties to the action in which this proceeding was heard; and further, that I am not a relative or employee of any attorney or counsel employed by the parties thereto, and am not financially or otherwise interested in the outcome of the action. This the 15th day of April 2013. /s/Margaret M. Powell, CVR Margaret M. Powell, CVR Notary Number 19970780127 Margaret M. Powell, CVR - (919) 779-0322</p>